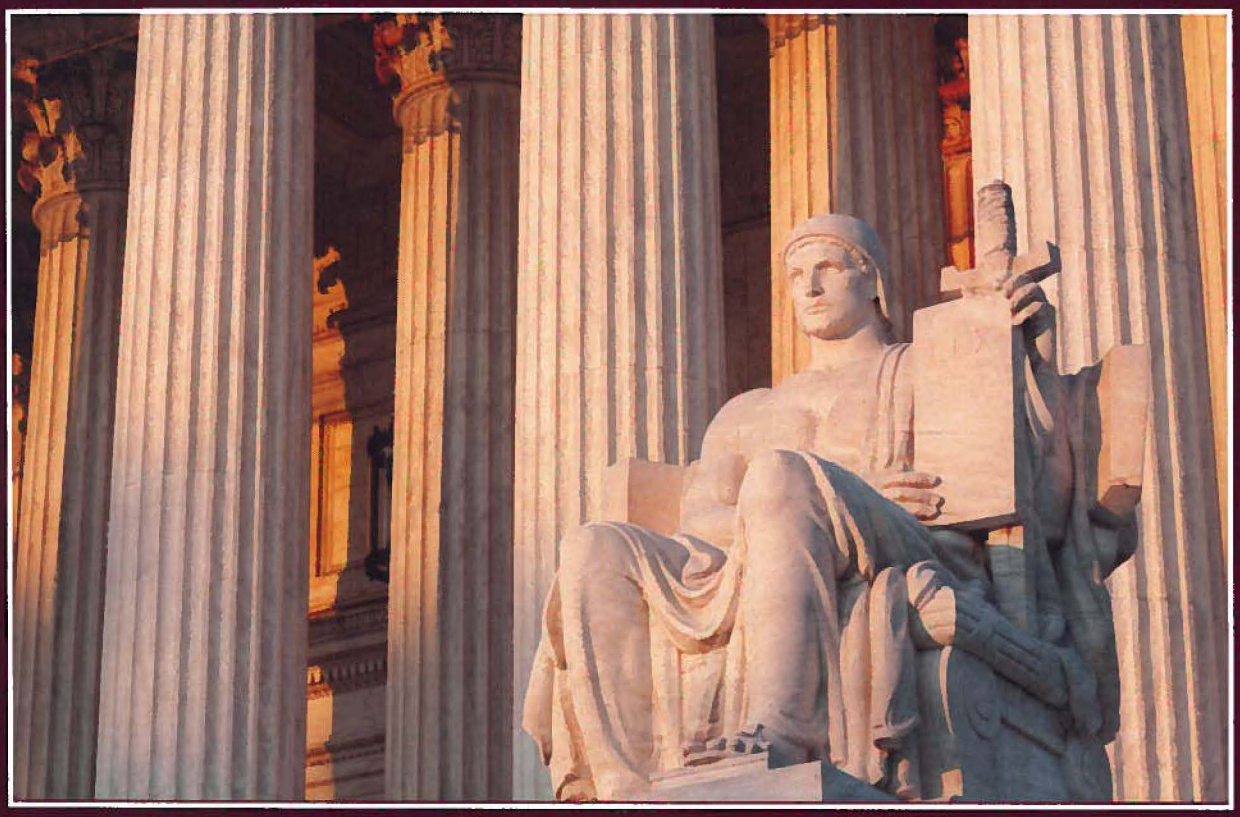
2014

2014 Legislative Summary

Assembly Committee on Public Safety

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

2014
Legislative Summary



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LEGISLATIVE SUMMARY 2014

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ANIMAL ABUSE

Guide, Signal, or Service Dogs: Victim Compensation

Guide, service, and signal dogs are highly trained animals that make a healthy, fulfilling, and independent life possible for people with a variety of physical and mental health challenges. Current law states that it is a criminal offence to cause injury to a guide, signal, or service dog. A defendant who is convicted in these attacks is required to provide restitution to the victim for the harm caused to the dog. If the defendant, however, is unable to provide immediate compensation, the victim is left unable to obtain funds to replace the dog or care for the injuries sustained to the animal.

> **AB 2264 (Levine), Chapter 502,** extends eligibility for compensation of up to $10,000 under the Victim Compensation Program to cover costs associated with the injury or death of a guide, signal, or service dog, including veterinary and other expenses, as a result of a crime if the perpetrator is unable to make restitution to the victim.

BACKGROUND CHECKS

Summary Criminal History Information: Animal Control Officers

Existing law requires the Department of Justice to furnish state summary criminal history information requested by specified entities, as needed in the course of their duties. Additionally, the department is allowed to furnish federal-level summary criminal history information to specified entities when specifically authorized. Local law enforcement agencies also maintain local summary criminal history information that they furnish as specified by existing law. People allowed access to summary criminal history information include California peace officers, peace officers of other states, prosecuting attorneys, probation and parole officers, county child welfare agency personnel, supervising correctional facility officers, and humane officers. Animal control officers currently do have direct access to summary criminal history information.

> **AB 1511 (Gaines), Chapter 449,** allows criminal justice agencies to furnish state and local summary criminal history information to an animal control officer upon the showing of a compelling need.

Summary Criminal History Information: State Hospitals

State hospitals are entitled to receive criminal history information for many, but not all, commitments with admissions material received from a court or law enforcement agency. Hospital clinicians, however, have limited or no access to this material. Moreover, the information cannot be included in a patient's confidential file. As more than 96 percent of state hospital admission in 2012 had contact with the criminal justice system, access to summary criminal history information would be useful to State Department of State Hospitals clinicians to complete an accurate violence risk assessment and get a fuller picture of a patient's history.

> **AB 1960 (Perea), Chapter 730,** provides access of state summary criminal history information to a state hospital director or clinician whenever a patient is committed to the State Department of State Hospitals to assess a patient's risk of violence, to assess the appropriate placement of a patient, for treatment purposes of a patient, for use in preparing periodic reports as required by statute, or to determine the patient's progress or fitness for release.

Summary Criminal History Information: Sex Offender Registrant

The state furnishes summary criminal history information to various public and private entities that are screening prospective employees, licensees, or volunteers. These reports outline criminal convictions that a person has sustained. There are some situations, however, when an applicant's status as a registered sex offender is either unclear or not reported through the summary criminal history information. For example, there are approximately 15,000 registered sex offenders in California whose registrable conviction is for a non-California (i.e., federal, military, or out-of-state) sex offense. When an entity receives state, as opposed to national,

summary criminal history information, the information does not indicate that the subject is a registered sex offender.

AB 2404 (Eggman), Chapter 472, requires the Department of Justice to include an applicant's sex offender registration status whenever the department furnishes state or federal summary criminal history information to specified entities as a result of an employment, licensing, or certification application.

CHILD ABUSE

Child Abuse Reporting: Teacher Training

In recent years, there has been an alarming increase in incidents of unreported child abuse where one or more school employees were aware of the incident– illustrating gaping holes in these mandated reporters' knowledge of the Child Abuse and Neglect Reporting Act (CANRA).

Despite CANRA's clear reporting requirements, school districts are merely 'encouraged' rather than required to provide employees who qualify as mandated reporters with training on either abuse identification or abuse reporting. The absence of training is a failure of our system that leaves millions of students at risk every single day.

AB 1432 (Gatto), Chapter 797, requires annual training in the identification of, and reporting of, known or suspected child abuse and neglect by all school district, county office of education (COE), state special schools, and diagnostic centers operated by the California Department of Education (CDE), and charter school personnel within the first six weeks of each school year, or within six weeks of employment. Specifically, this new law:

- Deletes the requirement for the State Office of Child Abuse Prevention to develop and disseminate information to all school districts and district school personnel in California regarding the detection of child abuse; deletes the authorization for the information to be disseminated by the use of literature, as deemed suitable by CDE, and deletes the requirement for the CDE to develop staff development seminars and any other appropriate means of instructing school personnel in the detection of child abuse and neglect and the proper action that school personnel should take in suspected cases of child abuse and neglect, and deletes the definition of "school personnel."

- Requires CDE, in consultation with the Office of Child Abuse Prevention in the Department of Social Services, to do all of the following:

    - Develop and disseminate information to all school districts, COEs, state special schools and diagnostic centers operated by CDE, and charter schools, and their school personnel in California, regarding the detection and reporting of child abuse;

    - Provide statewide guidelines on the identification and reporting requirements for child abuse and neglect, and the responsibilities of mandated reporters in accordance with the CANRA; and,

    - Develop appropriate means of instructing school personnel in the detection of child abuse and neglect and the proper action that school personnel should take in suspected cases of child abuse and neglect, including, but not limited

to, an online training module.

- Requires school districts, COEs, state special schools and diagnostic centers operated by CDE, and charter schools to annually provide online training using the online training module provides by the Department of Social Services (DSS), to their employees and persons working on their behalf, who are mandated reporters, on the mandated reporting requirements; requires mandated reporter training to be provided to school personnel hired during the course of the school year; and, requires the training to include information on child abuse and neglect identification and child abuse and neglect reporting and that failure to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor punishable by up to six months confinement in a county jail, or by a fine of $1,000, or by both that imprisonment and fine.

- States that all persons required to receive training, as specified, shall submit proof of completing the mandated reporter training required to the applicable governing board or body of the school district, COE, state special school and diagnostic center, or charter school within the first six weeks of each school year or within six weeks of employment.

- Requires school districts, COEs, state special schools, and diagnostic centers operated by the CDE, and charter schools to annually train their employees and persons working on their behalf in the duties of mandated reporters under the CANRA. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

Child Abuse and Neglect Reporting Act: Sexual Abuse

Under the Child Abuse and Neglect Reporting Act, sexual abuse is defined as sexual assault or sexual exploitation for purposes of mandating certain persons to report suspected cases of child abuse or neglect. Under the act, sexual exploitation refers to, among other things, when a person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, a film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except as specified. Failure to report known or suspected instances of child abuse, including sexual abuse, under the act is a misdemeanor.

AB 1775 (Melendez), Chapter 264, adds that knowingly downloading, streaming, or accessing material, including a video recording, in which a child is engaged in an act of obscene sexual conduct, except as specified, is sexual exploitation for the purpose of mandated reporting by specified individuals under the Child Abuse and Neglect Reporting Act.

CONTROLLED SUBSTANCES

Nitrous Oxide: Dispensing and Distributing

Existing law provides that any person who possesses nitrous oxide or any substance containing nitrous oxide with the intent to breathe, inhale, or ingest for the purposes of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses, or for the purposes of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes, or who knowingly with the intent to do so, is under the influence of nitrous oxide is a guilty of a misdemeanor.

Existing law states that every person who sells, furnishes, administers, distributes, or gives away, or offers to sell, furnish, distribute, or give away a device, canister, tank, or receptacle either exclusively containing nitrous oxide, or exclusively containing a chemical compound containing nitrous oxide to a person under 18 years of age is guilty of a misdemeanor.

AB 1735 (Hall), Chapter 458, makes it a misdemeanor for any person to dispense or distribute nitrous oxide to a person if it is known or should have been known that the nitrous oxide will be ingested or inhaled by the person for the purposes of causing intoxication, and that person proximately cause great bodily injury or death to himself, herself, or any other person. Specifically, this new law:

- Makes it a misdemeanor punishable by a term of imprisonment not to exceed six months, by a fine not to exceed $1,000, or both, for any person to dispense or distribute nitrous oxide to a person if it is known or should have been known that the nitrous oxide will be ingested or inhaled by the person for the purposes of causing intoxication, euphoria, dizziness, or stupefaction and that person proximately cause great bodily injury or death to himself, herself, or any other person.

- Requires a person who distributes or dispenses nitrous oxide to record each transaction involving nitrous oxide in a physical written or electronic document. The person dispensing or distribution the nitrous oxide shall require the purchaser to sign the document and provide a residential address and present a valid government issued photo identification card. The person dispensing or distributing the nitrous oxide shall sign and date the document and retain the document at the business address for one year from the date of the transaction.

- States that a person dispensing or distributing nitrous oxide shall make transaction records available during normal business hours for inspection and copying by officers and employees of the California State Board of Pharmacy, or other law enforcement agencies of this state, or of the United States upon presentation of a duly authorized search warrant.

- Requires that the document used to record each transaction shall inform the purchaser of all of the following:
    - The inhalation of nitrous oxide may be hazardous to your health;
    - That it is a violation of state law to possess nitrous oxide or any substance containing nitrous oxide with the intent to breathe, inhale, or ingest it for the purpose of intoxication;
    - That it is a violation of state law to knowingly distribute or dispense nitrous oxide or any substance containing nitrous oxide, to a person who intends to breathe, ingest, or inhale it for the purpose of intoxication;
    - States that these requirements shall not apply to any person that administers nitrous oxide for the purpose of providing medical or dental care if administered by a medical or dental provider licensed by this state or at the direction or under the supervision of a practitioner licensed in this state;
    - Provides that these requirements shall not apply to the sale or distribution of nitrous oxide by a licensed wholesaler or manufacturer classified under Code Numbers 325129 or 424690 of North American Industry Classifications System; and,
    - States that the above prohibition relating to the sale of nitrous oxide shall not preclude prosecution under any other law.

Possession of Controlled Substances: Deferred Entry of Judgment

Under existing law, the entry of judgment may be deferred with respect to a defendant charged with specific controlled substance offenses if they meet specific criteria, including no prior convictions for any offense involving a controlled substance and have had no prior felony convictions within five years.

Upon successful completion of a deferred entry of judgment, the arrest upon which the judgment was deferred shall be deemed to never have occurred. The defendant may in response to any question in regard to his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment, except as specified.

AB 2309 (Brown), Chapter 471, adds specified prescription medications contained in Schedule IV of the Uniform Controlled Substance Act to the list of crimes related to the unlawful possession of a controlled substance for which entry of judgment may be deferred if the defendant meet specified criteria.

Controlled Substances: Prescription Defense

In *People v. Carboni* (2014) 222 Cal.App.4th 834, the Court of Appeal ruled that only prescription holders can possess and transport their prescription drugs. For many ill people who are immobile, or lack transportation, this ruling could be problematic because there is no defense or protections for the person who is trying to help them get their medication from the pharmacy. This is a serious concern for the many seniors who live in a rural and medically underserved district, where it is not uncommon for a person to rely on a family member, friend, or caretaker to pick-up his/her prescription drugs.

The *Carboni* ruling would in effect criminalize the act of possessing or transporting prescription drugs, even for the purpose of simply trying to get those medications to the person who needs them. People who are trying to do a good deed for an infirm family member or friend should not be punished for trying to help.

> **AB 2603 (V. Manuel Pérez), Chapter 540,** provides that it is not unlawful for a person other than the prescription holder to possess a prescribed controlled substance under the following circumstances:
>
> - The possession of the prescribed controlled substance is at the direction or with the express authorization of the prescription holder; and
>
> - The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

Cocaine: Penalties

Crack and powder cocaine are two forms of the same drug. Scientific reports, including a major study published in the Journal of the American Medical Association, demonstrate that they have essentially identical effects on the human body. Powder cocaine can be injected or snorted. Crack cocaine can be injected or smoked, and is a product derived when cocaine powder is processed with an alkali, typically common baking soda. Gram for gram, there is less active drug in crack cocaine than in powder cocaine.

Whatever their intended goal, disparate sentencing guidelines for two forms of the same drug has resulted in a pattern of institutional racism, with longer prison sentences given to people of color who are more likely than whites to be arrested and incarcerated for cocaine base offenses compared to powder cocaine offenses, despite comparable rates of usage and sales across racial and ethnic groups.

California separately defined, scheduled and punished powder cocaine in contrast with other forms of cocaine in 1986. In 1987, cocaine base was specifically referenced in Schedule I and possession for sale of cocaine base was placed in Health and Safety Code Section 11351.5, with higher penalties than for cocaine hydrochloride.

SB 1010 (Mitchell), Chapter 749, equalizes penalties for possession for sale of cocaine base and possession for sale of powder cocaine. Specifically, this new law:

- Changes the penalty for possession for sale of cocaine base from three, four, or five years, to two, three, or four years of incarceration. (The penalties for simple possession or straight sales are currently the same: two, three or four years, and three, four or five years.)

- Prohibits granting probation to a person convicted of possession for sale of 28.5 grams or more of cocaine base, or 57 grams or more of a substance containing at least 5 grams of cocaine base, rather than 14.25 grams, unless the court finds unusual circumstances demonstrating that probation promotes justice.

- Authorizes seizure and forfeiture of a vehicle, boat or airplane used as an instrumentality of drug commerce involving cocaine base weighing 28.5 grams or more, or 57 grams or more of a substance containing at least 5 grams of cocaine base, rather than 14.25 grams.

- States legislative findings and declarations that powder cocaine and cocaine base are "two forms of the same drug, the effects of which on the human body are so similar that to mete out unequal punishment for the same crime...is wholly and cruelly unjust."

Controlled Substances: Synthetics

Existing law makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, to offer to sell, dispense, distribute, furnish, administer, or give, or to possess for sale, any synthetic stimulant compound or any specified synthetic stimulant derivative, including naphthylpyrovalerone and 2-amino-l-phenyl-l-propanone. Existing law also makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale any synthetic cannabinoid compound or any synthetic cannabinoid derivative.

SB 1283 (Galgiani), Chapter 372, creates an infraction for the use or possession of specified synthetic stimulant compounds or synthetic stimulant derivatives, or any synthetic cannabinoid compound or any synthetic cannabinoid derivative. Specifies the punishment for the infraction is a maximum fine of $250.

CORRECTIONS

Condoms: Prisons

According to the Department of Corrections and Rehabilitation's (CDCR) data, an average of 1,240 inmates are infected with HIV/AIDS in California's prisons. CDCR estimates the cost of care for these inmates at over $18 million. Because CDCR does not require HIV testing, the true number of infected inmates is unknown. According to the University of California, San Francisco, the rate of HIV infection among inmates is eight to ten times higher than among the general population. Various studies provided by the author attribute this high rate to intravenous drug use prior to incarceration. Due to the difficultly in conducting studies and limited availability of information, the primary causes of infection for inmates after incarceration are unknown. However, these studies estimate that sexual activity is the leading cause for HIV infection in prison.

The Centers for Disease Control and Prevention (CDC) has urged correctional systems to evaluate existing condom programs, and, for systems without condom access, to assess relevant laws, policies, and local circumstances and determine the risks and benefits of condom distribution. The World Health Organization (WHO) recommends focusing program evaluation on determining: whether condom access has unintended negative consequences for safety or security operations, the feasibility of implementing and expanding condom access, and conditions that facilitate acceptance among staff and inmates. In response to the WHO recommendations, over 80 percent of European Union prison systems, the Correctional Service of Canada, and prisons in Australia, South Africa, Brazil, Indonesia, and Iran provide condoms for inmates. In the United States, condom distribution programs exist in the Los Angeles, California; San Francisco, California; New York City, New York; Philadelphia, Pennsylvania; and Washington, D.C. county jails; and in the Mississippi and Vermont state prison systems. Condoms have been available to jail inmates in San Francisco since 1989, and to inmates in the Los Angeles jails since 2001. However, the 165,000 state prisoners in California have not had access to condoms, and a pilot program evaluating the risks, as recommended by CDC, had not been conducted. Consistent with CDC and WHO guidance, Governor Arnold Schwarzenegger, in his October 14, 2007 veto message of Assembly Bill 1334, directed CDCR to determine the "risk and viability" of allowing non-profit or healthcare agencies to distribute sexual barrier protection devices (e.g., condoms) to inmates in one state prison facility, noting that, while sexual activity in prisons is against the law, providing condoms to inmates is consistent with the need to improve our prison healthcare system and overall public health.

> **AB 966 (Bonta), Chapter 587,** requires that CDCR develop a five-year plan to expand the availability of condoms in all California prisons.

Youth Offenders: Security Placement

In California, young people between the ages of 18 and 22 entering the adult prison system are more likely than older prisoners to be sent directly to the highest security prison yards with the most dangerous inmates and the least amount of programming. The result is a lost opportunity for the state to reduce recidivism.

Research shows that incarcerated youth are especially vulnerable to physical and sexual assault and psychological harm including depression and suicide. At this age, youth are still maturing and are highly sensitive to both positive and negative influences. Their environment has a huge impact on their development and life choices. If youth entering the adult prison system are placed in the most dangerous environments, odds are that they will not choose a lifestyle that leads them away from bad choices and instead sets them back on a path to reoffend or remain in prison longer. However, studies also show that positive influences have just as much of an impact on this age group - the availability of education and vocational training in prison, particularly for youth, can significantly reduce recidivism and set an incarcerated youth on a better path.

AB 1276 (Bloom), Chapter 590, requires the Department of Corrections and Rehabilitation (CDCR) to conduct a youth offender Institutional Classification Committee review at reception to provide special classification consideration for every youth offender under 22 years of age. Specifically, this new law:

- Prohibits the youth offender from being classified at the security level corresponding with his or her placement score if his or her in-custody behavior indicates he or she can be safely placed at a lower security level;

- Requires a youth offender to be classified for placement at a lower security level facility than corresponds with his or her placement score or in a placement that permits increased access to programs based on consideration of specified factors;

- Provides if the youth offender demonstrates he or she is a safety risk to inmates, staff, or the public, and does not otherwise demonstrate a commitment to rehabilitation, the youth offender shall be reclassified and placed at a security level that is consistent with department regulations and procedure;

- Requires that a youth offender who is denied a lower security level and is placed in the highest security level to be eligible to have his or her placement reconsidered at his or her annual review until age 25;

- Specifies if at an annual review it is determined that the youth offender has had no serious rule violations for one year, the department shall consider whether the youth would benefit from placement in a lower level facility or placement permitting increased access to programs; and,

- Requires CDCR to revise existing regulations and adopt new regulations pursuant to these provisions, as necessary.

Corrections: Inmate Transfers

As part of the 2012 Budget Act, SB 1021 (Committee on Budget and Fiscal Review), Chapter 41, Statutes of 2012, expanded the authority of counties to contract with other counties to house county jail inmates. After the passage of the Public Safety Realignment Act of 2011 (AB 109 (Committee on Budget), Chapter 15, Statutes of 2011), there were concerns that some counties with already overcrowded jail populations would not be able to adequately house new inmates sentenced under realignment to serve time in county jails.

Prior to the enactment of SB 1021, counties were allowed to contract with nearby counties for the housing of committed misdemeanants and any persons required to serve a term of imprisonment in a county jail as a condition of probation. SB 1021 expanded this authority by removing the requirement that the receiving county must be a nearby county, and authorizing any inmate confined to the county jail to be transferred through a county-to-county contract.

Some counties are currently undergoing renovation of their jail facilities to construct more bed spaces for inmates and have contracted with other counties to house their inmates until construction has been completed. However, the provisions of law that authorize these county transfers of inmates to counties that are not nearby sunsets on July 1, 2015.

AB 1512 (Stone), Chapter 44, extends the sunset date on provisions of law that allow a county where adequate facilities are not available for prisoners in its adult detention facilities to enter into agreements with one or more counties that have adequate facilities, as specified. This new law excludes pre-trial inmates from being transferred through county-to-county transfers.

Incarcerated Persons: Voting Rights Guide

Existing law requires each county probation department to establish and maintain on the department's Internet Website a hyperlink to the Internet Website at which the Secretary of State's voting rights guide for incarcerated persons may be found, or to post, in each county probation department where probationers are seen, a notice that contains the Website address at which the Secretary of State's voting rights guide for incarcerated persons may be found.

AB 2243 (Weber), Chapter 899, requires the California Department of Corrections and Rehabilitation to either establish and maintain on the department's Website a hyperlink to the Website at which the Secretary of State's voting rights guide for incarcerated persons may be found, or post in each parole office where parolees are seen a notice that contains the Website address at which the Secretary of State's voting rights guide for incarcerated persons may be found.

Veterans Service Advocate: Correctional Facilities

Recidivism rates among veterans continue to be an issue that must be addressed. Currently the California Department of Corrections and Rehabilitation (CDCR) provides veteran inmates with information and forms to apply and receive State Department of Veterans Affairs (VA) benefits. However, the process for qualifying for VA benefits is often complicated and burdensome.

One of the major problems is that facilities under CDCR's jurisdiction do not have a designated person responsible for assuring that veterans are able to have access to VA benefits upon release.

AB 2263 (Bradford), Chapter 652, authorizes a veterans service organization to volunteer to serve as a veterans service advocate at each facility that is under the jurisdiction of CDCR to assist veteran inmates with securing specified benefits upon their release. Specifically, this new law:

- Authorizes the advocate to develop a veterans economic recidivism prevention plan for each inmate who is a veteran during the 180 day period prior to an inmate's release date;
- Requires CDCR to assist with the development and execution of the veterans economic recidivism prevention plan by facilitating access by the advocate to each inmate who is a veteran;
- Provides that access to inmates will be subject to CDCR screening and clearance guidelines and training requirements that are imposed on other visitors and volunteers;
- Allows advocates access to inmates to the extent it does not pose a threat to the security or safety of the facility, or to inmates and staff;
- Requires a copy of the veterans economic recidivism prevention plan be provided to the inmate prior to the inmate's release;
- Requires the advocate to coordinate with the U.S. Department of Veterans Affairs in order to provide each inmate who is a veteran with access to earned veterans' benefits; and,
- Requires the advocate to coordinate with VA and the county veterans service officer in the county in which the facility is located for advice, assistance, and training, and to evaluate the effectiveness of the veterans economic recidivism prevention plan.

Probation and Parole: Sex Offender Management Program

AB 1844 (Fletcher), Chapter 219, Statutes of 2010, commonly referred to as "Chelsea's Law"', required that persons placed on parole or probation for a crime requiring annual registration as a sex offender participate in, and successfully complete as a condition of release, an approved sex offender management program. The law is unclear if persons convicted prior to the passage of Chelsea's Law are required to participate in an approved sex offender management program.

> **AB 2411 (Bonta), Chapter 611,** clarifies that participation in the sex offender management program is required by every probationer and parolee convicted of a crime requiring registration as a sex offender regardless of when the person's crime or crimes were committed.

Inmate Assessment: Military Service

Existing law requires the Department of Corrections and Rehabilitation to conduct assessments of all inmates that include, but are not limited to, data regarding the inmate's history of substance abuse, medical and mental health, education, family background, criminal activity, and social functioning. These assessments are to be used to place the inmate in programs that will aid in his or her reentry to society and that will most likely reduce the inmate's chances of reoffending.

Data on the number of incarcerated veterans is difficult to obtain. One of the reasons is because, until recently, this information was self-reported. As of February 2014, the department can now verify prior military service through a data exchange with the U.S. Department of Veterans Affairs.

> **AB 2357 (Skinner), Chapter 184,** requires the Department of Corrections and Rehabilitation to include data regarding an inmate's service in the United States military in its mandatory assessment of all inmates for purposes of placing the inmate in programs that will aid in his or her reentry to society and that will most likely reduce the inmate's chances of reoffending.

Medical Technical Assistants: Firearms

In 2012, AB 2623 was introduced to mandate that peace officers working for the Department of State Hospitals (DSH) be permitted to carry firearms regardless of the approval of the agency. It is the current policy of the DSH that peace officers within their facilities and the surrounding areas should not be armed with firearms because it is a therapeutic environment.

> **AB 2506 (Salas), Chapter 820,** Permits medical technical assistant series employees designated by the Secretary of the Department of Corrections and Rehabilitation or designated by the secretary and employed by the State Department of State Hospitals as peace officers authorized to carry a firearm while not on duty.

Prisons: California Rehabilitation Oversight Board

Under existing law, the California Rehabilitation Oversight Board (C-ROB) is the entity charged with reviewing rehabilitation and treatment programs for inmates and parolees. The goal of this review is to ensure that the state has adequate services for inmates and parolees and also to identify deficiencies. C-ROB was created in 2007 to provide recommendations to the Legislature and the Governor on whether inmate rehabilitation and treatment programs need modification, additions, or elimination. Successful rehabilitation programs would mean less recidivism throughout the state.

Currently, C-ROB is not required to review health care programs that would help inmates and parolees rehabilitate. The health care of an inmate is a key factor in whether he or she will be able to successfully reintegrate into society. Inmates who need medical attention in prison are likely to also need health care once released. Research shows that formerly incarcerated individuals who have access to medical services upon release have reduced recidivism rates, increasing the likelihood they will become productive citizens.

> **AB 2570 (Skinner), Chapter 822,** would require C-ROB to examine the department's effort to assist inmates and parolees to obtain postrelease health care coverage.

Jails: Discharge of Prisoners

Existing law authorizes the sheriff of each county to discharge a prisoner from the county jail on the last day a prisoner may be confined. Existing law allows for the accelerated release of inmates, upon the authorization of the presiding judge of the superior court.

County jails regularly release inmates at night, often because the law requires they be let out before midnight on the last day of their sentence. Many inmates are discharged to reentry centers for substance abuse treatment, transitional housing or other services. However, most of these centers do not have transportation services available at night or cannot admit clients during nighttime hours. Public transportation can be limited or nonexistent at night in some areas.

> **SB 833 (Liu), Chapter 90,** gives sheriffs the option of creating a program in which those in custody can voluntarily remain in jail for up to an additional 16 hours after their release date or until normal business hours, whichever is shorter, so that they may be discharged to a treatment center or during daytime hours.

Inmates: Temporary Removal

Under existing law, there is a lack of clarity as to whether the Secretary of the California Department of Corrections and Rehabilitation (CDCR) has the statutory authority to temporarily remove an inmate from the state prison to assist law enforcement in gathering evidence related to the commission of crimes.

SB 771 (Galgiani), Chapter 181, Statutes of 2013, authorized the Secretary of CDCR to temporarily remove an inmate from prison or any other institution for the purpose of permitting

the inmate to assist with the gathering of evidence related to crimes. SB 771 was operative only until January 1, 2015.

SB 1015 (Galgiani), Chapter 193, deleted the January 1, 2015 sunset date on the above provisions of law that authorized the Secretary of CDCR to temporarily remove an inmate from prison or any other CDCR institution for the purpose of permitting the inmate to assist with the gathering of evidence related to crimes.

Inmates: Sterilization

Despite current regulations that prohibit sterilizations of incarcerated people, medical providers were illegally authorizing tubal ligations on women prisoners. On June 19, 2014, the California State Auditor released report 2013-120: "Sterilization of Female Inmates: Some Inmates Were Sterilized Unlawfully, and Safeguards Designed to Limit Occurrences of the Procedure Failed." The review includes an examination of each sterilization case from the last eight years.

During the eight-year audit period, 144 female inmates were sterilized by a procedure known as a bilateral tubal ligation. The last of these female inmate sterilizations occurred in 2011. The report found the state entities responsible for providing medical care to these inmates, the Department of Corrections and Rehabilitation (CDCR) and the Receiver's Office, sometimes failed to ensure that inmates' consent for sterilization was lawfully obtained. Overall, the audit notes that 39 inmates were sterilized following deficiencies in the informed consent process.

SB 1135 (Jackson), Chapter 558, prohibits sterilization for the purpose of birth control of an individual under the control of CDCR or a county correctional facility, as specified. Specifically, this new law:

- Prohibits any means of sterilization of an inmate, except when required for the immediate preservation of life in an emergency medical situation or when medically necessary, as determined by contemporary standards of evidence-based medicine, to treat a diagnosed condition and certain requirements are satisfied, including that patient consent is obtained;

- Provides if a sterilization procedure is performed under one of those exceptions, a psychological consultation and medical follow up is required;

- Requires CDCR and all county jails or other institutions of confinement to provide notification to all individuals under their custody and to all employees who are involved in providing health care services of their rights and responsibilities under these provisions; and,

- Requires CDCR to publish data on its Internet Web site related to the number of sterilizations performed.

Correctional Officers: Napa County

On June 6, 1988, Santa Clara County transferred control of its jails from the sheriff to the county Department of Corrections (DOC). In 1999, Santa Clara was given the ability to utilize enhanced power custodial officers. Santa Clara sought legislative intervention due to years of confusion and litigation regarding the status of the county's custodial officers.

The California Supreme Court held that "[t]he Legislature has made clear its intention to retain the exclusive power to bestow peace officer status on state, county and city employees. Since that chapter [Chapter 4.5 of the Penal Code, sections 830 et seq.] does not authorize the director of a county jail facility to designate custodial officers as peace officers, the director's action cannot be sustained." (*County of Santa Clara v. Deputy Sheriffs' Association of Santa Clara County* (1992) 3 Cal.4th 873, 886.) Santa Clara County found itself in this situation after the voters changed the county charter in 1988 to transfer control of the jails out of the jurisdiction of the sheriff and instead to the county DOC. (*Id.* at p. 876.) The lawful way for Santa Clara County custodial officers to gain peace officer powers not currently granted to them by state law requires enacting another state law. (Assembly Committee on Public Safety Analysis, SB 1019 (Vasconcellos), Chapter 635, Statutes of 1999.)

Like Santa Clara, the Napa County DOC was separated from the Sheriff's Department by the Board of Supervisors in 1975. They were the first in the state of California to become a civilian-run facility, and are currently one of two in the state not operated by the Sheriff's Department. While Napa County has a population less than 425,000, the county is not able to utilize enhanced powers custodial officers because the Penal Code requires that the custodial officers be employed by a law enforcement agency. (*See generally* Pen. Code, § 831.5.)

SB 1406 (Wolk), Chapter 53, permits officers employed by the Napa County DOC to perform additional duties. Specifically, this new law:

- Authorizes, upon a resolution by the Napa County Board of Supervisors, custodial officers employed by the Napa County DOC to perform the same duties as Santa Clara custodial officers.

- Provides that custodial officers employed by Napa County DOC are authorized to perform the following additional duties in the facility:

    - Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;

    - Search property, cells, prisoners, or visitors;

    - Conduct strip or body cavity searches of prisoners as specified;

    - Conduct searches and seizures pursuant to a duly issued warrant;

- Segregate prisoners; and,
- Classify prisoners for the purpose of housing or participation in supervised activities.

COURT HEARINGS

Condoms: Evidence

Human Rights Watch (HRW), released a report in July 2012 titled *"Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities"* which reviewed research literature on sex workers in Los Angeles and San Francisco and conducted its own interviews with persons either in sex trades or in organizations that provide health and social services to that population. In addition to specific cases in which possession of condoms was used as evidence of prostitution, HRW found that the threats of harassment of sex workers about possessing condoms had resulted in a prevalent belief that one is risking arrest and prosecution as a prostitute by having any condoms in one's possession when approached by law enforcement. As a result, many sex workers will no longer carry any condoms or a sufficient number of condoms, thereby creating multiple opportunities for transmission of HIV to and from the sex worker.

In San Francisco, a 1995 decision by the District Attorney and police generally ended the practice of using condoms as evidence of prostitution. However, in the ensuing nearly two decades, that practice reasserted itself in direct contradiction to city and county policy. As a result, the police were forced again to declare that they would no longer use condoms as evidence of prostitution. However, what San Francisco's history demonstrates is that in the absence of a statutory prohibition, the practice will emerge again once attention is directed elsewhere. In Los Angeles, sex workers report that it is common knowledge that carrying more than 2 or 3 condoms could get you arrested for prostitution. As a result, many do not use condoms.

> **AB 336 (Ammiano), Chapter 403,** requires that if the prosecution intends to use evidence of condom possession by the defendant as evidence in a prostitution case, the evidence can only be admitted through the following process: the prosecutor must file a written motion and offer of proof, with a sealed affidavit, arguing the relevance of the evidence; the court must review the offer of proof to determine if there are grounds for a hearing on the admissibility of the condom evidence; if the court finds there is some basis for the evidence, it shall hold a hearing to determine if the evidence is relevant and not overly prejudicial.

Human Trafficking: Expungements

Under existing law, a person may have his or her criminal conviction set aside or dismissed, however these convictions are still visible in the person's criminal history information.

In cases involving prostitution, defendants are quickly arrested, charged, and sentenced with little to no investigation into their personal backgrounds. In some of these cases, these women and men are victims of human trafficking who are forced into prostitution. Even if the person is successful in having his or her conviction set aside, it may be discovered during a background check because the expungement process still requires the Department of Justice (DOJ) to reveal

these convictions to employers and licensing and certification entities.

AB 1585 (Alejo), Chapter 708, provides that a defendant who has been convicted of solicitation or prostitution may petition the court for, and the court may set aside the conviction if the defendant can show that the conviction was the result of his or her status as a victim of human trafficking. This new law also prohibits DOJ from disseminating the petitioner's record of conviction for applications and petitions related to adoptions, and other specified licensing, employment and certification requirements.

Falsified Public Records: Voiding Procedures

With the proliferation of real estate fraud crimes over the past 10 years, the need for prosecutors to help victims of real estate fraud clear title to their property is greater than ever. There are many cases throughout California where prosecutors successfully convict defendants of filing false or fraudulent deeds, liens, conveyances, etc. to real property, but a criminal court declines to adjudge the false or fraudulent deed void for lack of clear law on the subject.

The only remedy for victims in these cases is through a civil quiet title action. This is often time consuming, economically and mentally taxing for the victim, and sometimes unsuccessful. The victim must fight on his or her own to clear title to property that was clouded by a defendant who has suffered a criminal conviction, thereby adding another level of injury.

AB 1698 (Wagner), Chapter 455, creates a process to allow a judge to declare an instrument void when there is a criminal action finding that instrument forged or false. Specifically, this new law:

- Provides that after a person is convicted of filing a forged instrument, upon written motion of the prosecuting agency, the court after a hearing shall issue a written order that the false or forged instrument be adjudged void ab initio if the court determines that an order is appropriate.

- Provides that the order shall state whether the instrument is false, forged or both and a copy of the instrument shall be attached to the order at the time it is issued by the court and a certified copy of the order shall be filed at the appropriate public office by the prosecuting agency.

- Provides if the false or forged instrument has been recorded with a county recorder the order shall be recorded in the county where the real property is located.

- Sets forth procedures that the prosecuting agency shall use in filing a motion.

- Provides that the order shall be considered a judgment and subject to appeal under the Code of Civil Procedure.

Veterans: Sentencing

Of the 2.6 million Americans returning from service in Iraq and Afghanistan as many as 20% have post-traumatic stress disorder (PTSD). One of the unfortunate consequences of PTSD is an increased propensity for criminal behavior. This is tragically borne out by the fact that among incarcerated veterans, veterans from the most recent conflict are three times more likely to have combat-related PTSD.

There is a demonstrable link between veterans with mental health problems as a result of their service and increased levels of incarceration. In spite of this link, California law currently fails to require the consideration of mental health problems associated with military service as a mitigating factor in certain criminal cases.

AB 2098 (Levine), Chapter 163, requires the court to consider a defendant's status as a veteran suffering from PTSD or other forms of trauma when making specified sentencing determinations. Specifically, this new law:

- Requires the court to consider a defendant's status as a veteran suffering from sexual trauma, traumatic brain injury, PTSD, substance abuse, or other mental health problems as result of his or her military service, as a factor in favor of granting probation.

- Requires the court to consider a defendant's status as a combat veteran suffering from sexual trauma, traumatic brain injury, PTSD, substance abuse, or other mental health problems as a result of his or her military service, as a factor in mitigation when choosing whether to impose the lower, middle, or upper term.

Misdemeanor Offenses: Deferral of Sentencing

Existing law authorizes a county to establish a diversion program for defendants who have been charged with a misdemeanor offense and authorizes other diversion programs, including for defendants with cognitive developmental disabilities, defendants in nonviolent drug cases, and traffic violations.

Currently, existing misdemeanor diversion programs are largely authorized and administered at the discretion of a prosecuting attorney. However, the court has the inherent authority to sentence a defendant to what the court finds is appropriate, including refraining from entering a judgment after a defendant has pleaded guilty.

AB 2124 (Lowenthal), Chapter 732, establishes a pilot program in the County of Los Angeles, until January 1, 2020, to authorize a judge in the superior court at the judge's discretion and over the objection of the prosecution, to defer sentencing a defendant who has submitted a plea of guilty or nolo contendere to a misdemeanor for a period not to exceed 12 months. Specifically, this new law:

- Specifies certain criteria that will disqualify a defendant, including having been previously deferred or the charge including specified crimes;

- Authorizes the judge to order the defendant to comply with terms, conditions, and programs, as specified, and requires a defendant whose sentence is deferred to complete all conditions ordered by the court, make full restitution, and comply with specified court orders in order to have his or her plea stricken; and,

- Provides that if the defendant during the period of deferral in a county without a misdemeanor diversion program, complies with all terms, conditions, and programs required by the court, then, the judge shall, at the end of the period, strike the defendant's plea and dismiss the action against the defendant.

Competency: Involuntary Medication

Under existing law, when a defendant's competency to stand trial is questioned, the judge will order the defendant to undergo an evaluation by a court-appointed mental health expert, followed by a hearing. If the defendant is found incompetent to stand trial, the individual typically is ordered to be transferred to a state hospital for treatment designed to restore competency. Incompetent to stand trial (IST) defendants are housed in the county jail pending the transfer and admission to a state hospital. Currently, the demand for space at state hospitals is greater than the supply of beds, therefore resulting in waiting lists that fluctuate between 300 to 350 defendants at any time. The length of time on the waiting list can vary from a couple of weeks to four to six months. In order to address the shortage of treatment beds, the department has initiated projects for treatment of mentally-ill offenders and IST defendants in county jails, and sought ways to streamline program operations and better align reporting requirements.

One of the current barriers to adequate treatment and competency restoration is the disconnect between a state hospital and county jail systems. Currently, an order for involuntary medication is valid only at a Department of State Hospitals facility. Once the patient transfers to a new jurisdiction, typically the county jail following the restoration of their competency, the medication order becomes invalid and the defendant may not receive any involuntary medication unless the new jurisdiction seeks a new order from the court. Any gap in medication coverage can result in the defendant decompensating to the point of incompetency once again, necessitating a recommitment in the state hospital. Delays in treatment not only put the defendant's mental health at risk, but also result in unnecessary costs to the state for additional treatment in a state hospital.

AB 2186 (Lowenthal), Chapter 733, allows the representative of any facility where a defendant found incompetent to stand trial is committed, and specified others, to petition for an order to involuntarily medicate the defendant, and, upon issuance of that order, authorizes the involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at any facility housing him or her for purposes of recovering mental competency. Specifically, this new law:

- Requires the court, when determining if the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication, to consider opinions in the reports prepared by the psychiatrist or licensed psychologist appointed by the court to examine the defendant for mental competency purposes, if those reports are applicable to this issue.

- Requires the court, if it finds any one of a list of described conditions to be true, to issue an order, as specified and valid for no more than one year, authorizing involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at any facility housing the defendant for the purpose of recovering mental competency.

- Provides that if an administrative law judge upholds the 21-day certification by the defendant's treating psychiatrist that antipsychotic medication has become medically necessary and appropriate, the court may, for a period of not more than 14 days, extend the certification and continue the required hearing pursuant to stipulation between the parties or upon a finding of good cause.

- Allows the district attorney, county counsel, or representative of any facility where an IST defendant is committed to petition the court for an order, reviewable as specified, to administer involuntary medication pursuant to specified criteria.

- Requires the court to review the order to administer involuntary medication at the time of the review of the initial competency report by the medical director of the treatment facility and at the time of the review of the six-month progress reports.

- Allows the district attorney, county counsel, or representative of any facility where an IST defendant is committed, within 60 days before the expiration of the one-year involuntary medication order, to petition the committing court for a renewal of the order, subject to the specified conditions and requirements. Requires the petition to include the basis for involuntary medication, as specified, and requires notice of the petition to be provided to the defendant, the defendant's attorney, and the district attorney. Requires the court to hear and determine if the defendant continues to meet the required criteria for involuntary medication and that the hearing be conducted before the expiration of the current order.

Possession of Controlled Substances: Deferred Entry of Judgment

Under existing law, the entry of judgment may be deferred with respect to a defendant charged with specific controlled substance offenses if they meet specific criteria, including no prior convictions for any offense involving a controlled substance and have had no prior felony convictions within five years.

Upon successful completion of a deferred entry of judgment, the arrest upon which the judgment was deferred shall be deemed to never have occurred. The defendant may in response to any question in regard to his or her prior criminal record that he or she was not arrested or granted

deferred entry of judgment, except as specified.

AB 2309 (Brown), Chapter 471, adds specified prescription medications contained in Schedule IV of the Uniform Controlled Substance Act to the list of crimes related to the unlawful possession of a controlled substance for which entry of judgment may be deferred if the defendant meet specified criteria.

Criminal Procedure: Video Appearances

Under current law, a defendant may appear by video conferencing at the first appearance of the case, instruction and arraignment, or at the time of a plea at arraignment.

AB 2397 (Frazier), Chapter 167, expands the appearances that can be made via two-way video conferences between a defendant housed in a county jail and a courtroom to include specified non-critical trial appearances, if the defendant and defense counsel consent to the defendant's physical absence from court. Specifically, this new law:

- Provides that courts may require a defendant held in any state, county, or local facility within the county on felony or misdemeanor charges to be present for noncritical portions of the trial, including, but not limited to, confirmation of the preliminary hearing, status conferences, trial readiness conferences, discovery motions, receipt of records, the setting of the trial date, a motion to vacate the trial date, and motions in limine, by two-way electronic audio-video communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom.

- Specifies that a defendant who does not wish to be personally present for noncritical portions of trial may make an oral waiver in open court prior to the proceeding or may submit a written waiver to the court, which the court may grant in its discretion.

- States that if the defendant is represented by counsel, the attorney shall not be required to be personally present with the defendant for noncritical portions of the trial, if the audio-video conferencing system or other technology allows for private communication between the defendant and the attorney prior to and during the noncritical portion of trial. Any private communication shall be confidential and privileged.

- Defines "noncritical portions of the trial" for this section only, as only those appearances which testimonial evidence is not taken.

Competency: Procedure for Return to Court

A forensic patient is committed to the custody of a state hospital so that he may participate in programs aimed towards the restoration of the patient's mental competence so that he may stand trial for crimes for which he is charged. Some patients, however, have severe mental disorders that make it unlikely that they can be restored to competency. For these patients, the state

hospital issues a progress report to the committing court informing it that the patient is incompetent to stand trial and not likely able to regain competency in the foreseeable future. Many counties, however, do not retrieve these individuals as is required under existing law, which leaves them in the custody of the state hospital at financial cost to the state and further exacerbating the already lengthy waitlist for placement in a state hospital.

AB 2625 (Achadjian), Chapter 742, specifies procedures relative to returning to the court a defendant who is committed to a state hospital for treatment to regain mental competency but who has not recovered competence. Specifically, this new law:

- Requires the medical director of the state hospital or other treatment facility to which a defendant is confined for treatment to regain mental competence to do the following if the medical director's report concerning the defendant's progress toward mental competency recovery indicates that there is no substantial likelihood that the defendant will regain competency in the foreseeable future:
    - Promptly notify and provide a copy of the report to the defendant's attorney and the district attorney; and,
    - Provide a separate notification, in compliance with applicable privacy laws, to the committing county's sheriff that transportation will be needed for the patient.
- Requires that a defendant committed to a state hospital for treatment to regain mental competency, but who has not recovered competence, to be returned to the committing court no later than 90 days before the expiration of the defendant's term of commitment.

Wiretapping: Authorization

Existing law authorizes the Attorney General (AG), chief deputy attorney general, chief assistant attorney general, district attorney or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire, electronic digital pager, or electronic cellular telephone communications under specified circumstances. The provisions governing wiretap authorizations sunset on January 1, 2015.

The continuation of the California State Wiretap Statute, which includes both telephone and electronic communication technologies, will permit law enforcement to continue wiretap investigations under specified circumstances with judicial approval. California and federal law enforcement agencies and multi-agency task forces have used the law with great success since its enactment in 1989 to solve the most serious and difficult crimes, such as organized crime and drug trafficking, while maintaining an emphasis on the protection of individual privacy.

SB 35 (Pavley), Chapter 745, extends the sunset date until January 1, 2020 on provisions of California law which authorize the AG, chief deputy AG, chief assistant AG, district attorney or the district attorney's designee to apply to the presiding judge of

the superior court for an order authorizing the interception of wire or electronic communications under specified circumstances

Wiretapping: Human Trafficking

Existing law authorizes the Attorney General (AG), chief deputy attorney general, chief assistant attorney general, district attorney or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire, electronic digital pager, or electronic cellular telephone communications under specified circumstances.

Existing law authorizes the court to issue an order authorizing interception of those communications if the judge finds, among other things that there is probable cause to believe that an individual is committing, has committed, is about to commit, one of several offenses, including among others, possession for sale of certain controlled substances, murder, and certain felonies involving destructive devices.

SB 955 (Mitchell), Chapter 712, adds human trafficking to the list of offenses for which interception of electronic communications may be ordered pursuant to the above provisions.

Writ of Habeas Corpus: False Evidence

Existing law authorizes every person unlawfully imprisoned or restrained of his or her liberty, under any pretense, to prosecute a writ of habeas corpus for specified reasons, including when false evidence that is substantially material or probative on the issue of guilt or punishment was introduced against the person at any hearing or trial relating to his or her incarceration.

In 2012, the California Supreme Court held that in a habeas petition the "false evidence" standard is not met just because new technology causes an expert to reject his or her earlier testimony. (*In re Richards* (2012) 55 Cal.4th 948.) The court held the fact that the expert has changed his or her opinion has no bearing on the validity of the original opinion.

Prior to the *Richards* decision, individuals could and often did successfully challenge their convictions when the evidence underlying their original conviction has been substantially undermined by scientific and technological advances. Following the *Richards* decision, a case involving an expert witness whose testimony serves as the primary basis for a conviction – and who later realizes the analysis was wrong – cannot be reversed, no matter how egregious the false testimony.

SB 1058 (Leno), Chapter 623, provides, for purposes of a writ of habeas corpus, that false evidence includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.

Arraignments: Veterans

Penal Code section 1170.9 allows a combat veteran who is eligible for probation for a crime he or she has committed to be ordered to the appropriate treatment program when the court finds that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse or mental health problems stemming from service in the United States Military. Penal Code Section 1170.9 is designed to give our most traumatized soldiers a chance to confront and overcome the wounds of war. It directs courts to consider treatment rather than incarceration when sentencing a defendant who serves or who has served in the military.

However, there is a lack of awareness about this law and not enough being done to identify those who may be eligible. According to a 2014 report of the San Diego Veterans Treatment Review Court Pilot Program, most veterans that become involved in the criminal justice system are not being identified as veterans, and most veterans suffer more than one post-deployment conviction before they have a case in which they are identified as a military veteran.

SB 1110 (Jackson), Chapter 655, requires the court to inform defendants at arraignment about the availability of restorative relief provisions for defendants that are current or former members of the military. Specifically, this new law:

- Requires the Judicial Council to revise its military service form to include information explaining restorative relief provisions of the Penal Code applying to defendants having active duty or veteran military status, as well as the contact information for the county veterans' service office.

- Specifies that "active duty or veteran status" includes active military duty service, reserve duty service, national guard service, and veteran status.

- Requires the court to advise the defendant that certain current or former members of the military are eligible for specific forms of restorative relief under the Penal Code and that he or she may request a copy of the Judicial Council form for notification of military status which explains those rights.

- Requires the court to advise the defendant that he or she should consult with counsel before submitting the form and that he or she may decline to provide the information without penalty.

- States that if the defendant files the form for notification of military status, then the form shall be served on defense counsel and the prosecuting attorney to determine eligibility for veterans' restorative relief.

Criminal Actions: Dismissal

Existing law provides that a judge or magistrate may, either on his or her motion or upon the application of the prosecuting attorney, and in furtherance of justice, order that a criminal action be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes.

The requirement to state the reasons serves two main purposes, to promote judicial accountability by requiring courts to explain why such a power was exercised and to facilitate appellate review of the reasons for dismissal. However, due to the lack of flexibility to the courts, this mandate has led to costly and extraneous proceedings, when a simple solution is known. Recent cuts to the judiciary have forced our courts to come up with efficiencies that will save time, money, and resources while preserving justice.

> **SB 1222 (Block), Chapter 137,** allows a court to orally state the reason for the dismissal of an action on the record, and must set forth the reasons in an order entered upon the minutes if requested by either party.

CRIME PREVENTION

Firearms: Prohibited Persons

California has several laws that prohibit certain persons from purchasing or possessing firearms. All felony convictions lead to a lifetime prohibition, while specified misdemeanors will result in a 10-year prohibition. A person may be prohibited due to a protective order or as a condition of probation. Another prohibition is based on the mental health of the individual. The Department of Justice developed an automated system for tracking handgun and assault weapon owners in California who may pose a threat to public safety. The system collects information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. The department receives automatic notifications from state and federal criminal history systems to determine if there is a match in the system for a current California gun owner. It also receives information from courts, local law enforcement, and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, the department has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession.

Through legislative prompting, the California State Auditor conducted an audit concerning the reporting and identification of persons with mental illness who are prohibited from owning or possessing a firearm and found that although existing law requires courts to report individuals to the department whenever the courts make certain mental health determinations, many courts were unaware of these requirements.

> **AB 1591 (Achadjian), Chapter 141,** requires a court to notify the Department of Justice within one court day of specified court actions that would result in the prohibition of a person from possessing a firearm or any other deadly weapon or that would result in the person no longer being subject to the prohibition.

Firearms: Direct Shipment

A number of concerns have been raised as to the State's ability under current state code to regulate the activities of California residents going outside of California, acquiring ownership of a firearm, and then physically bringing that firearm back into the state. Federal law in essence mandates "direct ship," which means that guns can be acquired outside of the state. However, to be possessed and received in-state, the transaction has to be brokered through a federal firearms dealer for pickup in accordance with California law. That includes background checks, the waiting period, registration, etc. This mandate, stemming from 18 U.S.C. 922(a)(3), (a)(5), and (b)(2), creates certain procedures for bringing firearms across state lines and makes certain firearm transactions illegal.

In 2010, then Attorney General Brown was asked by District Attorney Bob Lee of Santa Cruz County whether in a private party transaction whether the transferee and the transferor each commit the crime if they do not comply with the provisions of "through dealer processing" or an

exemption thereto. *(Attorney General Opinion 10-504)* In October of 2013 after a review of the law in this area, Attorney General Harris opined that it was indeed a violation as to both. The opinion was careful not to opine if the violation was a "continuing offense."

AB 1609 (Alejo), Chapter 878, clarifies the regulations for direct shipment requirements for transfer of ownership of firearms. Specifically, this new law:

- Prohibits a California resident to import, bring or transport into California, any firearm that he or she purchased or otherwise obtained from outside the state unless he or she first has the firearm delivered to a dealer in California. This transaction would be subject to:
    - A 10-day waiting period;
    - A purchaser background check; and,
    - Possession of a handgun safety certificate by the purchaser.
- Makes a violation of these provisions involving a firearm that is not a handgun a misdemeanor, and a violation involving a handgun a misdemeanor or a felony.
- Specifies that the provisions of this bill only apply to the acquisition of firearms from an out of state source after January 1, 2015.
- Provides that a California resident who acquires ownership of a firearm by bequest or intestate succession who imports, brings or transports the firearm into this state is exempt for the prohibition on importing, bringing or transporting firearms into the state, if all of the following conditions apply:
    - If the firearm were physically received within this state, the receipt of that firearm by that individual would be exempt from the provisions requiring transfer through a licensed dealer;
    - Within 30 days of taking possession of the firearm and bringing it into the state, he or she shall forward by prepaid mail, or deliver in person to DOJ, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question;
    - Have or obtain a firearm safety certificate for any firearm, except that in the case of a handgun, an unexpired handgun safety certificate may be used;
    - The receipt of firearms by the individual is infrequent; and,

- The person acquiring ownership of that firearm by bequest or intestate succession is 18 years or age.

- Provides that a California resident who acquires ownership of a firearm as the executor or administrator of an estate, who imports, brings or transports the firearm into this state is exempted from the prohibition on importing, bringing or transporting firearms into the state if all of the following conditions apply:

  - If the firearm was physically received within this state, the receipt of that firearm by that individual would be exempt from the provisions requiring transfer through a licensed dealer;

  - Within 30 days of taking possession of the firearm and bringing it into the state, he or she shall forward by prepaid mail, or deliver in person to DOJ, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question;

  - If the executor or administrator subsequently acquires ownership of that firearm, he or she is required to comply with section 27925; and,

  - The executor or administrator is 18 years of age or older.

- Exempts specified firearms licensees who are on the DOJ centralized list from the prohibition on importing, bringing or transporting firearms into the state.

- Exempts persons who have obtained specified DOJ permits to deliver weapons from the prohibition on importing, bringing or transporting firearms into the state, as specified.

- Exempts transactions in restricted weapons from the prohibition on importing, bringing or transporting firearms into the state, if the transactions comply with the procedure set forth for restricted weapons, as specified.

Grant Program: Supervised Population Workforce Training

Access to quality workforce training is important for successful reentry and reducing recidivism. Workforce training opportunities for men and women reentering our communities ensure that they acquire education, skills, and job placement assistance required for securing necessary employment after being released from incarceration, as people are less likely to offend or recidivate if they are gainfully employed. California, however, in seeking to expand training and job placement services for its re-entry population faces significant challenges in securing public and private sector funding. One major challenge stems from the Workforce Investment Act basic success metric to get participants into the workforce as quickly as possible. This basic program design acts as a disincentive for local Workforce Investment Boards (WIB) to develop

and/or expand training programs and initiatives that serve Californians with greater needs or who face higher barriers in securing employment. Local WIBs and community based workforce training programs who have built a track record of success rely heavily on collaborative program planning, case management, and other implementation strategies that also require resources.

AB 2060 (V. Manuel Pérez), Chapter 383, establishes the Supervised Population Workforce Training Grant Program, administered by the California Workforce Investment Board, that outlines program eligibility criteria for counties and eligible uses for grant funds including, but not limited to, vocational training, stipends for trainees, and apprenticeship opportunities for the supervised population, which would include individuals on probation, mandatory supervision, and postrelease community supervision.

CRIMINAL JUSTICE PROGRAMS

Child Abuse Reporting: Teacher Training

In recent years, there has been an alarming increase in incidents of unreported child abuse where one or more school employees were aware of the incident– illustrating gaping holes in these mandated reporters' knowledge of the Child Abuse and Neglect Reporting Act (CANRA).

Despite CANRA's clear reporting requirements, school districts are merely 'encouraged' rather than required to provide employees who qualify as mandated reporters with training on either abuse identification or abuse reporting. The absence of training is a failure of our system that leaves millions of students at risk every single day.

AB 1432 (Gatto), Chapter 797, requires annual training in the identification of, and reporting of, known or suspected child abuse and neglect by all school district, county office of education (COE), state special schools, and diagnostic centers operated by the California Department of Education (CDE), and charter school personnel within the first six weeks of each school year, or within six weeks of employment. Specifically, this new law:

- Deletes the requirement for the State Office of Child Abuse Prevention to develop and disseminate information to all school districts and district school personnel in California regarding the detection of child abuse; deletes the authorization for the information to be disseminated by the use of literature, as deemed suitable by CDE, and deletes the requirement for the CDE to develop staff development seminars and any other appropriate means of instructing school personnel in the detection of child abuse and neglect and the proper action that school personnel should take in suspected cases of child abuse and neglect, and deletes the definition of "school personnel."

- Requires CDE, in consultation with the Office of Child Abuse Prevention in the Department of Social Services, to do all of the following:

    - Develop and disseminate information to all school districts, COEs, state special schools and diagnostic centers operated by CDE, and charter schools, and their school personnel in California, regarding the detection and reporting of child abuse;

    - Provide statewide guidelines on the identification and reporting requirements for child abuse and neglect, and the responsibilities of mandated reporters in accordance with the CANRA; and,

    - Develop appropriate means of instructing school personnel in the detection of child abuse and neglect and the proper action that school personnel should

take in suspected cases of child abuse and neglect, including, but not limited to, an online training module.

- Requires school districts, COEs, state special schools and diagnostic centers operated by CDE, and charter schools to annually provide online training using the online training module provides by the Department of Social Services (DSS), to their employees and persons working on their behalf, who are mandated reporters, on the mandated reporting requirements; requires mandated reporter training to be provided to school personnel hired during the course of the school year; and, requires the training to include information on child abuse and neglect identification and child abuse and neglect reporting and that failure to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor punishable by up to six months confinement in a county jail, or by a fine of $1,000, or by both that imprisonment and fine.

- States that all persons required to receive training, as specified, shall submit proof of completing the mandated reporter training required to the applicable governing board or body of the school district, COE, state special school and diagnostic center, or charter school within the first six weeks of each school year or within six weeks of employment.

- Requires school districts, COEs, state special schools, and diagnostic centers operated by the CDE, and charter schools to annually train their employees and persons working on their behalf in the duties of mandated reporters under the CANRA. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

Family Justice Centers

There are currently no standards in California law to govern the relationship between service providers and law enforcement elements working under the same roof in a Family Justice Center (FJC). Each service provider at a FJC is bound by the standards of their respective profession; however, there is currently no over-arching structure in law defining the boundaries between these partnerships.

AB 1623 (Atkins), Chapter 85, authorizes a local government or nonprofit organization to establish a FJC to assist crime victims. Specifically, this new law:

- Authorizes a city, county, city and county, or community-based nonprofit organization to establish a FJC to assist victims of domestic violence, sexual assault, elder and dependent adult abuse, and human trafficking to ensure victims of abuse are able to access all needed services in one location.

- Provides that staff members at a FJC may be comprised of, but are not limited to, the following: law enforcement personnel; medical personnel; victim-witness program personnel; domestic violence shelter staff; community-based rape crisis, domestic violence, and human trafficking advocates; social service agency staff members; child

welfare agency social workers; county health department staff; city or county welfare and public assistance workers; nonprofit agency counseling professionals; civil legal service providers; supervised volunteers from partner agencies; and, other professionals providing services.

- Prevents a FJC from denying crime victims services on the grounds of criminal history. Prohibits criminal history searches from beinh conducted on a victim at a FJC as a condition of receiving services within a FJC without the victim's written consent, unless the criminal history search is pursuant to an active criminal investigation.

- Provides that crime victims are not required to participate in the criminal justice system or cooperate with law enforcement in order to receive counseling, medical care, or other services at a FJC.

- Requires each FJC to develop policies and procedures, in collaboration with local community-based crime victim service providers and local survivors of violence and abuse, to ensure coordinated services are provided to victims and to enhance the safety of victims and professionals at the center who participate in affiliated survivor-centered support or advocacy groups.

Board of State and Community Corrections

Existing law establishes the Board of State and Community Corrections (BSCC) to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, as specified. Existing law also requires BSCC to develop incentives for units of local government to develop comprehensive regional partnerships whereby adjacent jurisdictions pool grant funds in order to deliver services to a broader target population and maximize the impact of state funds at the local level.

AB 1920 (Campos), Chapter 601, specifies that BSCC must include training and employment opportunities within the services to be delivered through regional partnerships and grant funds, and includes at-risk youth in the target population that would receive those services.

Grant Program: Supervised Population Workforce Training

Access to quality workforce training is important for successful reentry and reducing recidivism. Workforce training opportunities for men and women reentering our communities ensure that they acquire education, skills, and job placement assistance required for securing necessary employment after being released from incarceration, as people are less likely to offend or recidivate if they are gainfully employed. California, however, in seeking to expand training and job placement services for its re-entry population faces significant challenges in securing public and private sector funding. One major challenge stems from the Workforce Investment Act basic success metric to get participants into the workforce as quickly as possible. This basic program design acts as a disincentive for Local Workforce Investment Boards (WIB) to develop

and/or expand training programs and initiatives that serve Californians with greater needs or who face higher barriers in securing employment. Local WIBs and community based workforce training programs who have built a track record of success rely heavily on collaborative program planning, case management, and other implementation strategies that also require resources.

AB 2060 (V. Manuel Pérez), Chapter 383, establishes the Supervised Population Workforce Training Grant Program, administered by the California Workforce Investment Board, that outlines program eligibility criteria for counties and eligible uses for grant funds including, but not limited to, vocational training, stipends for trainees, and apprenticeship opportunities for the supervised population, which would include individuals on probation, mandatory supervision, and postrelease community supervision.

Offenders: Home Detention Programs

As part of the 2011 Realignment Act, counties were given many tools to address the increase in offenders, including state funding to house and create programs for offenders as well as increased funding for successful programs. Counties were also given expanded authority to place county offenders into alternative custody programs such as electronic monitoring. However, counties have found that some inmates will refuse to participate in electronic monitoring programs because they cannot earn conduct credits. This means that an inmate could serve less time by remaining in custody where he or she can earn conduct credits; therefore the inmate chooses to stay in county jail even though he or she could be safely placed in the community.

AB 2499 (Bonilla), Chapter 612, provides offenders, who are subject to the custody of a local correctional administrator, with the opportunity to earn credit while participating in electronic monitoring and work release. Specifically, this new law:

- Expands the information a local law enforcement agency may receive about offenders on electronic monitoring to include current and historical GPS coordinates, if available, and restricts the use of this information to investigatory purposes;

- Requires an agency such as a police department that has knowledge that the subject in a criminal investigation is a participant in an electronic monitoring program to make reasonable efforts to notify the supervising agency prior to serving a warrant or taking any law enforcement action against a participant;

- Clarifies that mandatory supervision commences, unless otherwise ordered by the court, upon release from physical custody or an alternative custody program, whichever is later; and,

- Allows time spent in camp, work furlough, other facilities to count as mandatory jail time, even if the underlying statute does not require a mandatory minimum period of jail time.

Sexual Assault Forensic Exams: Federal Funding

As part of the 2015 Budget, President Obama has proposed providing $35 million to the states in order for the states to process evidence from sexual assault forensic exams. The new grant program would provide funding to inventory and test rape kits, develop "cold case" units to pursue new investigative leads, and support victims throughout the process. The grants could also be used to develop evidence-tracking systems, train law enforcement on sexual assault investigations, and conduct research on outcomes in sexual assault cases.

This funding is crucial. Federal studies show that crime labs have struggled over the past decade to meet the demand for DNA testing for all types of crimes. While labs were able to process 10% more cases in 2011 than in 2009, they also received 16.4% more requests for DNA testing. With demand continuing to outpace capacity, the rape kit backlog may continue to grow.

> **AJR 45 (Skinner), Chapter 62,** urges the Congress of the United States to provide at least $35 million to the states in order for the states to process evidence from sexual assault forensic exams.

Violent Crime Information Center

Existing law requires the Attorney General to maintain the Violent Crime Information Center (VCIC) to assist in the identification and the apprehension of persons responsible for specific violent crimes and for the disappearance and exploitation of persons, particularly children and dependent adults. The VCIC is also required to assist local law enforcement agencies and county district attorneys by providing investigative information on persons responsible for specific violent crimes and missing person cases.

> **SB 846 (Galgiani), Chapter 432,** clarifies that, notwithstanding any other law, a law enforcement agency, in California, may request information or data maintained by the Department of Justice for the purpose of linking unsolved missing or unidentified persons cases, or for the purpose of resolving these cases, as specified.

Emergency Services: Silver Alert

Existing law authorizes a law enforcement agency to request that the California Highway Patrol (CHP) activate a "Silver Alert" if a person is reported missing, and the agency determines that certain requirements are met, including, that the missing person is 65 years of age or older, the investigating law enforcement agency has utilized all available local resources, and the law enforcement agency determines that the person has gone missing under unexplained or suspicious circumstances.

> **SB 1127 (Torres), Chapter 440,** authorizes a law enforcement agency to request the CHP to activate a "Silver Alert" when a developmentally disabled or cognitively impaired person is reported missing, and specified conditions are met, and deletes the existing January 1, 2016 sunset date on the "Silver Alert" law.

Diversion: Veterans and Members of the Military

California has nearly two million military veterans living in the state. Many of these veterans suffer from service-related trauma, such as post-traumatic stress disorder, or traumatic brain injury. Unfortunately, some veterans find themselves entangled in the criminal justice system.

Diversion programs and the benefits of these programs are well established. These programs reduce recidivism by targeting the underlying source of criminal behavior. Diversion programs also reduce court and incarceration costs, as well as connect participants to services that help them resume positive community participation.

Successfully completing a diversion program ensures that the participant is able to avoid the consequences of a conviction, such as difficulty finding a job or securing housing. Participation in these programs can connect veterans to services that are available but underutilized, including mental health treatment, addiction treatment, housing and medication.

SB 1227 (Hancock), Chapter 658, creates a diversion program for members of the U.S. Military and veterans who commit misdemeanors and who are suffering from service-related trauma or substance abuse. Specifically, this new law:

- Provides that if the court determines the defendant is eligible, and the defendant consents and waives his or her right to a speedy trial, the court may place the defendant in a pretrial diversion program;

- States that the diversion period may be no longer than two years with progress reports to the court and the prosecutor not less than every six months; and,

- Provides, upon completion of diversion, the arrest upon which the diversion was based shall be deemed to have never occurred and the defendant may indicate that he or she was not arrested or diverted for an offense when asked for a criminal record. However, the diversion may be disclosed in response to a peace officer application request.

CRIMINAL OFFENSES

Trespass: Request for Law Enforcement Assistance

Current law allows property owners to fill out a "Trespass Arrest Authorization" form and file it with the local police department. The signed form gives police officers authority to go onto private property, and if they find trespassers, they can make arrests without the owner having to be present. The verification is done through the "Trespass Arrest Authorization" form so the police department does not risk litigation.

Extending arrest authorization forms from 6 to 12 months not only strengthens the authorization of the form, but it significantly reduces the administrative time for the police departments processing them. Additionally, extending the arrest authorization allows owners to file the form only once a year, while keeping properties free from unwanted individuals for a period of 12 months.

> **AB 1686 (Medina), Chapter 453**, extends from 6 months to 12 months the time in which a property owner may authorize a peace officer to arrest a trespasser on private property, closed to the public and posted as being closed, without the owner of the property being present.

Nitrous Oxide: Dispensing and Distributing

Existing law provides that any person who possesses nitrous oxide or any substance containing nitrous oxide with the intent to breathe, inhale, or ingest for the purposes of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses, or for the purposes of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes, or who knowingly with the intent to do so, is under the influence of nitrous oxide is a guilty of a misdemeanor.

Existing law states that every person who sells, furnishes, administers, distributes, or gives away, or offers to sell, furnish, distribute, or give away a device, canister, tank, or receptacle either exclusively containing nitrous oxide, or exclusively containing a chemical compound containing nitrous oxide to a person under 18 years of age is guilty of a misdemeanor.

> **AB 1735 (Hall), Chapter 458**, makes it a misdemeanor for any person to dispense or distribute nitrous oxide to a person if it is known or should have been known that the nitrous oxide will be ingested or inhaled by the person for the purposes of causing intoxication, and that person proximately cause great bodily injury or death to himself, herself, or any other person. Specifically, this new law:
>
> - Makes it a misdemeanor punishable by a term of imprisonment not to exceed six months, by a fine not to exceed $1,000, or both, for any person to dispense or distribute nitrous oxide to a person if it is known or should have been known that the nitrous oxide will be ingested or inhaled by the person for the purposes of causing

intoxication, euphoria, dizziness, or stupefaction and that person proximately cause great bodily injury or death to himself, herself, or any other person.

- Requires a person who distributes or dispenses nitrous oxide to record each transaction involving nitrous oxide in a physical written or electronic document. The person dispensing or distribution the nitrous oxide shall require the purchaser to sign the document and provide a residential address and present a valid government issued photo identification card. The person dispensing or distributing the nitrous oxide shall sign and date the document and retain the document at the business address for one year from the date of the transaction.

- States that a person dispensing or distributing nitrous oxide shall make transaction records available during normal business hours for inspection and copying by officers and employees of the California State Board of Pharmacy, or other law enforcement agencies of this state, or of the United States upon presentation of a duly authorized search warrant.

- Requires that the document used to record each transaction shall inform the purchaser of all of the following:

    - The inhalation of nitrous oxide may be hazardous to your health;

    - That it is a violation of state law to possess nitrous oxide or any substance containing nitrous oxide with the intent to breathe, inhale, or ingest it for the purpose of intoxication;

    - That it is a violation of state law to knowingly distribute or dispense nitrous oxide or any substance containing nitrous oxide, to a person who intends to breathe, ingest, or inhale it for the purpose of intoxication;

    - States that these requirements shall not apply to any person that administers nitrous oxide for the purpose of providing medical or dental care if administered by a medical or dental provider licensed by this state or at the direction or under the supervision of a practitioner licensed in this state;

    - Provides that these requirements shall not apply to the sale or distribution of nitrous oxide by a licensed wholesaler or manufacturer classified under Code Numbers 325129 or 424690 of North American Industry Classifications System; and,

    - States that the above prohibition relating to the sale of nitrous oxide shall not preclude prosecution under any other law.

Wires: Unlawful Removal

In Humboldt County, Suddenlink Communications has been the victim of multiple intentional fiber cutting attacks resulting in the loss of services including cable, internet, and cell phone service to over 10,000 customers on several occurrences. In other incidents throughout California, cable nodes have been vandalized and cable amplifiers and emergency backup batteries have been stolen, resulting in the loss of communications services, including the ability to make emergency 911 calls, for thousands of residential and business customers. Dependable communication services are critical for public safety, national security and California's economic growth and sustainability. Current law limits the penalty to $500 or up to one year in county jail which has not served as a deterrent to this type of crime.

AB 1782 (Chesbro), Chapter 332, makes the following changes in the alternate felony-misdemeanor statute that prohibits removing, destroying, obstructing use of or damaging, any communications line or line used to conduct electricity, or connecting without authorization to a line used to conduct electricity. Specifically, this new law:

- Adds or includes the acts of disconnecting or cutting a specified communications line or line used to conduct electricity.

- Includes a backup deep cycle battery or other connected power supply in the devices covered by the law prohibiting and punishing the act of removing, damaging or obstructing a specified communications line or line used to conduct electricity.

- Increases the maximum fine for the offense from $500 to $10,000 per incident.

Prostitution: Solicitation of a Minor

Under current law solicitation of a minor for the purposes of prostitution is not distinguished from solicitation of a person who is not under the age of consent. In California, the age of consent is 18 years of age. California punishes solicitation for prostitution with a punishment of up to six months in the county jail. Additionally, the penalty increases to a year in the county jail for persons who solicit for prostitution with a prior offense.

AB 1791 (Maienschein), Chapter 710, increases the penalty for solicitation of prostitution when the person being solicited is a minor from six months in the county jail to one year in the county jail.

Piracy: Audio Recordings and Audiovisual Work

Existing law states that a person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author,

artist, performer, producer, programmer, or group thereon. This provision does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers.

Existing law also requires, in addition to any other penalty or fine, the court to order a person who has been convicted of a violation of the above provision to make restitution to an owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation.

AB 2122 (Bocanegra), Chapter 857, expands the offense of failing to disclose the origin of a recording or audiovisual work when utilizing the material for financial gain, and when at least 100 articles of audio recordings or audiovisual work are involved, to include "the commercial equivalent thereof."

Prostitution: Fines

Penal Code section 672 provides that where no other fine is specified, the maximum fine for a felony is $10,000 and the maximum for a misdemeanor is $1,000. While many felony statutes specifically state that the maximum fine for the offense is $10,000, others simply state that the offense is a felony or that an offense punishable pursuant to Penal Code Section 1170, subdivision (h).

AB 2424 (Campos), Chapter 109, increases the maximum fine for abduction or procurement by fraudulent inducement for prostitution from $2,000 to $10,000.

Voluntary Manslaughter: Panic Defense

Existing law provides that when a person intentionally but unlawfully kills in a sudden quarrel or heat of passion, the person lacks malice and is guilty of voluntary manslaughter rather than murder. Evidence that a defendant in a criminal case killed the victim in response to discovery of the victim's gender or sexual orientation has been introduced in some cases in an attempt to defend against a charge of murder and try to establish sufficient provocation to find that the crime was committed in the heat of passion. This strategy has been called the "panic defense."

AB 2501 (Bonilla), Chapter 684, prohibits the use of the "panic defense" to support a finding of sudden quarrel or heat of passion, which is necessary to reduce murder to manslaughter. Specifically, this new law:

- Provides that for the purposes of determining sudden quarrel or heat of passion for voluntary manslaughter, the provocation was not objectively reasonable if it resulted from the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance towards the defendant, or if the defendant and victim

dated or had a romantic or sexual relationship.

- Provides that it shall not preclude the jury from considering all relevant facts to determine whether the defendant was in fact provoked for purposes of establishing subjective provocation.

Controlled Substances: Prescription Defense

In *People v. Carboni* (2014) 222 Cal.App.4th 834, the Court of Appeal ruled that only prescription holders can possess and transport their prescription drugs. For many ill people who are immobile, or lack transportation, this ruling could be problematic because there is no defense or protections for the person who is trying to help them get their medication from the pharmacy. This is a serious concern for the many seniors who live in a rural and medically underserved district, where it is not uncommon for a person to rely on a family member, friend, or caretaker to pick-up his/her prescription drugs.

The *Carboni* ruling would in effect criminalize the act of possessing or transporting prescription drugs, even for the purpose of simply trying to get those medications to the person who needs them. People who are trying to do a good deed for an infirm family member or friend should not be punished for trying to help.

AB 2603 (V. Manuel Pérez), Chapter 540, provides that it is not unlawful for a person other than the prescription holder to possess a prescribed controlled substance under the following circumstances:

- The possession of the prescribed controlled substance is at the direction or with the express authorization of the prescription holder; and

- The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

Peace Officer Impersonation: Seizure & Fine

Existing law makes it a crime for a person who is not a peace officer to impersonate a peace officer. Specifically, it is a misdemeanor subject to punishment by up to 6 months imprisonment in a county jail, a fine not exceeding $1,000, or by both, for any person to willfully wear, exhibit, or use any badge, insignia, emblem, device, label, certificate, card, or writing that falsely purports to be authorized for use by a peace officer.

SB 702 (Anderson), Chapter 514, increases the fine for a person impersonating a peace officer to a maximum of $2,000 and requires the local law enforcement agency that files charges for a violation of this crime to seize the item used to carry out the impersonation.

Assault By an Inmate

There are cases where a defendant's prior conviction may or may not count as a "strike" for purposes of enhanced punishment, depending on his or her conduct in the prior offense. To determine whether a prior conviction qualifies as a strike, the present court examines the otherwise admissible evidence from the entire record of the prior conviction to determine whether the acts actually committed constitute a serious felony. But, if the record does not disclose the facts of the offense actually committed, the present court must presume that the conviction rested only on the least statutory elements necessary for that conviction.

One may commit an assault in two ways that would not qualify as a "serious" felony under the Three Strikes Law. First, one may aid and abet the assault without personally inflicting great bodily harm or using a firearm. Second, one may commit the assault with force "likely" to cause great bodily injury without, however, actually causing great bodily injury or using a deadly weapon.

As currently drafted, Penal Code section 4501 proscribes assaults committed by inmates in either one of two way (with a deadly weapon, or by means of force likely to produce great bodily injury) in the same subdivision. In 2011, Governor Brown signed AB 1026 (Knight), which reorganized Penal Code section 245, the general assault statute, into separate subdivisions to allow the parties to determine the nature of the prior conviction by determining the specific statutory provision under which the conviction occurred. Penal Code section 4501 needs the same clarification.

> **SB 905 (Knight), Chapter 51,** rewrites the provision of law criminalizing an assault committed by a prison inmate either by means of force likely to produce great bodily injury or with a deadly weapon, by creating separate and distinct subdivisions.

Aggravated Arson

Existing law requires that the threshold amount of property damage or loss required under California's aggravated arson statute be reviewed every five years in order to consider the effects of inflation on the dollar amount of damage required. This provision was due to expire on January 1, 2014.

The aggravated arson statute provides law enforcement and prosecutors with a tool when dealing with the most dangerous arsonists in California. Aggravated arsons are those intended to cause great bodily injury to persons, cause damage to multiple structures, cause more than $6.5 million in damage, or were committed by a recidivist arsonist.

> **SB 930 (Berryhill), Chapter 481,** extends the sunset date until January 1, 2019 on the effects of inflation review provisions of the aggravated arson statute, and increases the threshold amount of damage or loss required from $6.5 million to $7 million.

Pimping and Pandering: Jurisdiction

The Legislature has created several exceptions to the rule that the territorial jurisdiction of a criminal case is where the offense occurred. These exceptions include sex crimes, domestic violence, child abuse, and human trafficking cases. When more than one violation of these crimes occurs in multiple jurisdictions, all of the charges may be prosecuted in a single jurisdiction where one of the crimes occurred. In order to consolidate the charges, there must be a written agreement as to the venue from each district attorney and that the charges are properly joinable. The request for consolidation requires the district attorneys to submit written evidence to a judge, as specified.

Like human trafficking, pimping, and pandering are not limited to one jurisdiction. By the crimes' very nature, the victims can be exploited wherever there is demand. Additionally, perpetrators frequently move across jurisdictional lines to avoid apprehension. Currently, these crimes must be prosecuted in each jurisdiction where the crime occurred. This often results in excessive trauma and travel for victims, unnecessary costs to our court system, and complicated prosecution of human-trafficking-related crimes.

SB 939 (Block), Chapter 246, permits the consolidation of human-trafficking-related charges occurring in different counties into a single trial if all involved jurisdictions agree. Specifically, this new law:

- Allows cases involving human trafficking, pimping, and pandering that occur in different jurisdictions to be joined in a single trial if all the district attorneys agree.
- Provides that consolidation of the cases is subject to a joinder hearing, within the jurisdiction of the proposed trial.
- Requires the prosecution to present written evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue.
- Requires charged offenses from jurisdictions where there is no written agreement from the district attorney to be returned to that county.
- Provides that when determining whether all counts in the complaint should be joined in one county for prosecution, the court shall consider the location and complexity of the likely evidence, where the majority of the offenses occurred, the rights of the defendant and the people, and the convenience of, or hardship to, the victim or victims and witnesses.
- Deletes existing language in Penal Code section 784.8 relating to the consolidation of human trafficking cases occurring in different counties.

Bribery: Statute of Limitations

Existing law establishes limitations on the time for commencing criminal actions with certain exceptions. Under existing law the limitation of time prescribed for certain specified crimes, including acceptance of a bribe by a public official or public employee, does not commence to run until the discovery of the offense.

SB 950 (Torres), Chapter 191, tolls the statute of limitations for the commencement of a criminal action until the discovery of the offenses of giving, offering, asking, receiving, or agreeing to a bribe by a public official or public employee.

Cocaine: Penalties

Crack and powder cocaine are two forms of the same drug. Scientific reports, including a major study published in the Journal of the American Medical Association, demonstrate that they have essentially identical effects on the human body. Powder cocaine can be injected or snorted. Crack cocaine can be injected or smoked, and is a product derived when cocaine powder is processed with an alkali, typically common baking soda. Gram for gram, there is less active drug in crack cocaine than in powder cocaine.

Whatever their intended goal, disparate sentencing guidelines for two forms of the same drug has resulted in a pattern of institutional racism, with longer prison sentences given to people of color who are more likely than whites to be arrested and incarcerated for cocaine base offenses compared to powder cocaine offenses, despite comparable rates of usage and sales across racial and ethnic groups.

California separately defined, scheduled and punished powder cocaine in contrast with other forms of cocaine in 1986. In 1987, cocaine base was specifically referenced in Schedule I and possession for sale of cocaine base was placed in Health and Safety Code Section 11351.5, with higher penalties than for cocaine hydrochloride.

SB 1010 (Mitchell), Chapter 749, equalizes penalties for possession for sale of cocaine base and possession for sale of powder cocaine. Specifically, this new law:

- Changes the penalty for possession for sale of cocaine base from three, four, or five years, to two, three, or four years of incarceration. (The penalties for simple possession or straight sales are currently the same: two, three or four years, and three, four or five years.)

- Prohibits granting probation to a person convicted of possession for sale of 28.5 grams or more of cocaine base, or 57 grams or more of a substance containing at least 5 grams of cocaine base, rather than 14.25 grams, unless the court finds unusual circumstances demonstrating that probation promotes justice.

- Authorizes seizure and forfeiture of a vehicle, boat or airplane used as an instrumentality of drug commerce involving cocaine base weighing 28.5 grams or

more, or 57 grams or more of a substance containing at least 5 grams of cocaine base, rather than 14.25 grams.

- States legislative findings and declarations that powder cocaine and cocaine base are "two forms of the same drug, the effects of which on the human body are so similar that to mete out unequal punishment for the same crime…is wholly and cruelly unjust."

Disorderly Conduct: Revenge Porn

Revenge porn refers to the posting of illicit pictures of another person without his or her consent, often as retaliation following a bitter breakup between partners. The distribution of a sexually explicit image an individual has taken of another identifiable person while in a private setting without the subject's consent is prohibited under current law. However, current law is silent as to images a person may have taken of themselves and which were subsequently distributed by others without his or her consent.

SB 1255 (Cannella), Chapter 863, expands the elements of the misdemeanor offense which prohibits the unlawful distribution of a consensually-taken image of an identifiable person's intimate body parts. Specifically, this new law:

- Makes it a misdemeanor to intentionally and without consent distribute an image of another identifiable person's intimate body parts or depicting the person engaged in one of several specified sexual acts, when the person distributing the image knows, or should know, that its distribution will cause serious emotional distress, and where the person depicted suffers that distress.

- Provides that a person intentionally distributes an image when he or she personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute it.

- Defines "intimate body part" as "any portion of the genitals, the anus, and in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or clearly visible through clothing."

- Makes distribution of the image exempt from prosecution if:

    - It is made in the course of reporting unlawful activity;

    - It is made in compliance with a subpoena or other court order for use in a legal proceeding; or,

    - It is made in the course of a lawful public proceeding.

Controlled Substances: Synthetics

Existing law makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, to offer to sell, dispense, distribute, furnish, administer, or give, or to possess for sale, any synthetic stimulant compound or any specified synthetic stimulant derivative, including naphthylpyrovalerone and 2-amino-l-phenyl-l-propanone. Existing law also makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale any synthetic cannabinoid compound or any synthetic cannabinoid derivative.

> **SB 1283 (Galgiani), Chapter 372,** creates an infraction for the use or possession of specified synthetic stimulant compounds or synthetic stimulant derivatives, or any synthetic cannabinoid compound or any synthetic cannabinoid derivative. Specifies the punishment for the infraction is a maximum fine of $250.

Trespass: Request for Law Enforcement Assistance

Business owners may now file a Letter of Agency (Trespass Arrest Authorization) to permit local police departments to enter their property to assist with trespass violations. Penal Code section 602, subdivision (o) limits the authorization period to six months. Business owners find the limited six-month requirement burdensome and find that the six-month re-issuance can lead to gaps in service if a timely reauthorization is not always possible.

> **SB 1295 (Block), Chapter 373,** extends from a maximum of 6 months to a maximum of 12 months the time in which a property owner may authorize a peace officer to arrest a trespasser on private property, closed to the public and posted as being closed, without the owner of the property being present, and provides that a request for assistance shall expire upon transfer of ownership of the property or upon change of the person in lawful possession.

Prostitution

Prostitution can be generally defined as "soliciting or agreeing to engage in a lewd act between persons for money or other consideration." Lewd acts include touching the genitals, buttocks, or female breast of either the prostitute or customer with some part of the other person's body for the purpose of sexual arousal or gratification of either person.

To implicate a person for prostitution themselves, the prosecutor must prove that the defendant "solicited" or "agreed" to "engage" in prostitution. A person agrees to engage in prostitution when the person accepts an offer to commit prostitution with specific intent to accept the offer, whether or not the offerer has the same intent.

For the crime of "soliciting a prostitute" the prosecutor must prove that the defendant requested that another person engage in an act of prostitution, and that the defendant intended to engage in an act of prostitution with the other person, and the other person received the communication containing the request. The defendant must do something more than just agree to engage in prostitution. The defendant must do some act in furtherance of the agreement to be convicted.

Words alone may be sufficient to prove the act in furtherance of the agreement to commit prostitution

A violation of section 647(b) is a misdemeanor. For a first offense conviction of prostitution the defendant faces up to 180 days in jail. If a defendant has one prior conviction of prostitution he or she must receive a county jail sentence of not less than 45 days. If the defendant has two or more prior convictions, the minimum sentence is 90 days in the county jail.

In addition to the punishment described above, if the defendant is conviction of prostitution, he or she faces fines, probation, possible professional licensing restrictions or revocations, possible immigration consequences, possible asset forfeiture, and possible driving license restrictions.

SB 1388 (Lieu), Chapter 714, increases fines related to the solicitation of an act of prostitution with a minor and creates a mandatory minimum sentence of 2 days, as specified. Specifically, this new law:

- Provides that a person who solicits a minor for an act of prostitution shall serve a minimum of two days in a county jail, and not more than one year.
    - Further specifies up to a $10,000 fine for the solicitation of a minor.
    - Requires that the defendant know, or should have known, that the person solicited is a minor at the time of the offense.
    - Clarifies that a court can reduce or eliminate the minimum mandatory two days in county jail in unusual cases, as specified.
- Increases an existing additional fine of up to $25,000 from $20,000 for placing a minor into prostitution, or furnishing a minor to another person for sexual conduct.

CRIMINAL PROCEDURE

Conditional Examinations: Human Trafficking

Existing law provides that when a defendant has been charged with any crime, he or she in all cases, and the people in cases other than those for which the punishment may be death, may if the defendant has been fully informed of his right to counsel, may have witnesses examined conditionally in his or her or their behalf, as prescribed.

States that when a defendant has been charged with a serious felony, as defined, or in a case of domestic violence, the people or the defendant may, if the defendant has been fully informed of his right to counsel, as provided by law, have a witness conditionally examined if there is evidence that the life of the witness is in jeopardy.

> **AB 1610 (Bonta), Chapter 709,** provides that if a defendant has been charged with human trafficking, and there is evidence that the victim or a material witness is being dissuaded from testifying at trial, or there is a reasonable basis to believe that the witness will not attend the trial because he or she is under the direct control of the defendant or another person involved in human trafficking and, by virtue of this relationship, the defendant or other person seeks to prevent the witness from testifying, and if the defendant is fully informed of his or her right to counsel, the court may have the witness examined conditionally.

Sex Crimes: Preservation of Testimony

In limited sex offense cases, current law allows victims' testimony to be taken at a preliminary hearing to be recorded and preserved on "videotape" (VHS). Victims who are younger than 16, developmentally disabled, or who have suffered rape or corporal injury at the hands of a spouse when certain circumstances are met, can have their testimony recorded and presented on VHS in front of the judge, defense, and jury at trial.

According to statute, videotapes, not video-recordings, of testimony are allowed to be shown when the court finds further in-person testimony would cause the victim severe emotional trauma. However VHS is quickly becoming an antiquated form of technology.

Most video cameras manufactured today record to a hard drive or another type of removable media card. Advances in technology have enabled cameras and video cameras to make digital video recordings. To use any other form of video, such as a digital recording, the district attorney prosecuting the case may need to put the request in writing, notice the defense attorney, and litigate the issue in front of the judge. This can unnecessarily delay the trial at a time when our courts are already inundated with cases.

> **AB 1900 (Quirk), Chapter 160,** allows a court to preserve testimony by any means of video-recording that complies with specified recording and preservation requirements as

opposed to videotape only.

Criminal Procedure: Video Appearances

Under current law, a defendant may appear by video conferencing at the first appearance of the case, instruction and arraignment, or at the time of a plea at arraignment.

AB 2397 (Frazier), Chapter 167, expands the appearances that can be made via two-way video conferences between a defendant housed in a county jail and a courtroom to include specified non-critical trial appearances, if the defendant and defense counsel consent to the defendant's physical absence from court. Specifically, this new law:

- Provides that courts may require a defendant held in any state, county, or local facility within the county on felony or misdemeanor charges to be present for noncritical portions of the trial, including, but not limited to, confirmation of the preliminary hearing, status conferences, trial readiness conferences, discovery motions, receipt of records, the setting of the trial date, a motion to vacate the trial date, and motions in limine, by two-way electronic audio-video communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom.

- Specifies that a defendant who does not wish to be personally present for noncritical portions of trial may make an oral waiver in open court prior to the proceeding or may submit a written waiver to the court, which the court may grant in its discretion.

- States that if the defendant is represented by counsel, the attorney shall not be required to be personally present with the defendant for noncritical portions of the trial, if the audio-video conferencing system or other technology allows for private communication between the defendant and the attorney prior to and during the noncritical portion of trial. Any private communication shall be confidential and privileged.

- Defines "noncritical portions of the trial" for this section only, as only those appearances which testimonial evidence is not taken

Fourth Amendment: Government Search

The U.S. Constitution provides that it and other federal laws are the supreme law of the land. The 4th Amendment to the U.S. Constitution sets forth the right against unreasonable searches and seizures by the federal government and prohibits a federal warrant from being issued unless there is probable cause, supported by an oath or affirmation, that particularly describes the place to be searched, and the person or thing to be seized. Recently, the federal government has collected phone record data on telephone calls made or received by American citizens. Moreover, federal surveillance programs on Americans extend to not just phone records but also to all types of electronic data, including emails, text messages, and information stored on smart phones. To collect electronic and metadata information, the federal government sometimes relies upon

services provided by the state.

SB 828 (Lieu), Chapter 861, prohibits the state from providing material support, participation, or assistance in response to a request from a federal agency or an employee of a federal agency to collect the electronically stored information or metadata of any person if the state has actual knowledge that the request constitutes an illegal or unconstitutional collection of electronically stored information or metadata.

Sex Crimes: Statute of Limitations

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. Under existing law, the prosecution for a felony sex offense subject to mandatory sex offender registration must be commenced within 10 years after the commission of the offense. (Pen. Code, § 801.1, subd. (b).) However, existing law provides that if specified sex crimes were committed when the victim was under 18 years of age, the statute of limitations for those sex offenses is until the victim's 28th birthday. (Pen. Code, § 801.1, subd. (a).) In addition to these two statutes of limitations, there are two tolling provisions for prosecution of specified sex offenses. (See Pen. Code, § 803.) Finally, under existing law, if a sex crime is prosecuted under the One Strike Law, it is not subject to a statute of limitations but can be commenced at any time.

There is consensus in the research literature that most individuals who experience childhood sexual abuse do not disclose this abuse until adulthood. Thus, while there are several opportunities to commence prosecution for sex crimes even after the victim turns 28, advocates contend that some victims need more time to come forward and expose their abuser.

SB 926 (Beall), Chapter 921, extends the statute of limitations for crimes of childhood sexual abuse from a victim's 28th birthday until the victim's 40th birthday. Specifically, this new law:

- Provides that the prosecution for any of the following offenses that is alleged to have been committed when the victim was under 18 years of age may be commenced at any time before the victim's 40th birthday:
    - Rape;
    - Sodomy;
    - Lewd or lascivious acts;
    - Oral copulation;
    - Continuous sexual abuse of a child; and,
    - Sexual penetration.

- Specifies that the extended tolling provisions shall only apply to crimes that were committed on or after January 1, 2015, or for which the statute of limitations that was in effect before January 1, 2015, has not run out as of that date.

Pimping and Pandering: Jurisdiction

The Legislature has created several exceptions to the rule that the territorial jurisdiction of a criminal case is where the offense occurred. These exceptions include sex crimes, domestic violence, child abuse, and human trafficking cases. When more than one violation of these crimes occurs in multiple jurisdictions, all of the charges may be prosecuted in a single jurisdiction where one of the crimes occurred. In order to consolidate the charges, there must be a written agreement as to the venue from each district attorney and that the charges are properly joinable. The request for consolidation requires the district attorneys to submit written evidence to a judge, as specified.

Like human trafficking, pimping, and pandering are not limited to one jurisdiction. By the crimes' very nature, the victims can be exploited wherever there is demand. Additionally, perpetrators frequently move across jurisdictional lines to avoid apprehension. Currently, these crimes must be prosecuted in each jurisdiction where the crime occurred. This often results in excessive trauma and travel for victims, unnecessary costs to our court system, and complicated prosecution of human-trafficking-related crimes.

SB 939 (Block), Chapter 246, permits the consolidation of human-trafficking-related charges occurring in different counties into a single trial if all involved jurisdictions agree. Specifically, this new law:

- Allows cases involving human trafficking, pimping, and pandering that occur in different jurisdictions to be joined in a single trial if all the district attorneys agree.
- Provides that consolidation of the cases is subject to a joinder hearing, within the jurisdiction of the proposed trial.
- Requires the prosecution to present written evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue.
- Requires charged offenses from jurisdictions where there is no written agreement from the district attorney to be returned to that county.
- Provides that when determining whether all counts in the complaint should be joined in one county for prosecution, the court shall consider the location and complexity of the likely evidence, where the majority of the offenses occurred, the rights of the defendant and the people, and the convenience of, or hardship to, the victim or victims and witnesses.
- Deletes existing language in Penal Code section 784.8 relating to the consolidation of human trafficking cases occurring in different counties.

Bribery: Statute of Limitations

Existing law establishes limitations on the time for commencing criminal actions with certain exceptions. Under existing law the limitation of time prescribed for certain specified crimes, including acceptance of a bribe by a public official or public employee, does not commence to run until the discovery of the offense.

SB 950 (Torres), Chapter 191, tolls the statute of limitations for the commencement of a criminal action until the discovery of the offenses of giving, offering, asking, receiving, or agreeing to a bribe by a public official or public employee.

Post-Conviction Procedure: DNA Testing

In 2000, the legislature established a new process that allowed a defendant to make a written motion to the trial court that entered the judgment of conviction in his or her case for the performance of DNA testing; prior to this time, defendants in California had no right to post-conviction discovery nor any procedure for letting courts evaluate whether a defendant should have post-conviction testing of DNA. The law, however, does not state clearly that an individual requesting testing is entitled to find out if evidence is available and testable, and some prosecutors, law enforcement agencies, and courts have been confused as to whether they must grant access. Consequently, obtaining testing remains difficult and time consuming and courts have struggled to effectively read this law.

SB 980 (Lieu), Chapter 554, revises the process for obtaining a court order authorizing post-conviction forensic deoxyribonucleic acid (DNA) testing. Specifically, this new law:

- Allows the court to order a hearing on a motion for DNA testing, and allows the court, upon request of the convicted person or his or her attorney, to order the prosecutor to make all reasonable efforts to obtain, and police agencies and law enforcement laboratories to make all reasonable efforts to provide, copies of DNA lab reports, chain of custody logs, and other specified documents in their possession or control.

- Requires a custodian of record to submit a report to the prosecutor and the convicted person or his or her attorney that sets forth the efforts that were made in an attempt to locate evidence if the evidence has been lost or destroyed. Requires, except as specified, the report to include the results of a physical search if the last known or documented location of the evidence prior to its loss or destruction was in an area controlled by a law enforcement agency.

- Provides that, in seeking the granting of the DNA testing, the convicted person is only required to demonstrate that the testing would be relevant to, rather than dispositive of, the issue of identity and that the convicted person is not required to show a favorable DNA test would conclusively establish his or her innocence.

- Prohibits the court, in determining whether the convicted person is entitled to develop potentially exculpatory evidence, from deciding whether the convicted person is entitled to some form of ultimate relief.

- Requires the testing to be conducted by a laboratory that meets the Federal Bureau Investigation Director's Quality Assurance Standards, whether mutually agreed upon by the parties or designated by the court. Specifies that laboratories accredited by listed entities satisfy this requirement. Prohibits a laboratory selected to perform testing but which is not a National DNA Index System (NDIS) participant from initiating analysis until documented approval has been obtained from an appropriate NDIS participating laboratory of acceptance of ownership of the DNA data that may be entered into or searched in the Combined DNA Index System (CODIS). Allows the laboratory to communicate with either party, upon request, during the testing process.

- Allows the court to conduct a hearing to determine if a DNA profile of an unknown contributor generated from the testing should be uploaded into the State Index System, and if appropriate, the National Index System. Allows the court to issue an order directing the uploading of the profile upon the satisfaction of specified conditions, so long as it does not violate any CODIS or state rule, policy or regulation. Requires notice of the hearing be provided to specified parties 30 court days prior to the hearing.

- Extends the period, as specified, that a government entity must wait to dispose of biological material relating to a case if the entity does not receive specified requests or court filings.

Juveniles: Sealing of Records

Current law allows the automatic sealing of certain juvenile records upon the completion of a probationary term imposed by the court. These automatic provisions apply to felonies as well as misdemeanors. For other cases, including less serious offenses, minors must wait until they are 18 years old or five years after jurisdiction is terminated before they can file a petition to seal their records. Because the petition to seal requires the involvement of the probation department, the prosecutor, and the court, often times there are lengthy delays as well as significant costs associated with sealing. Moreover, many youth are unaware of their right to petition or may have moved out of state and are unable to complete the process. Current law also authorizes a court to approve the dismissal of a petition, or set aside the findings and dismiss the charges in a delinquency case, if the court finds it is in the interest of justice and the welfare of the minor, or if it finds the minor is not in need of additional treatment or rehabilitation. This option, however, is available only until the subject of the record reaches the age of 21.

SB 1038 (Leno), Chapter 249, provides for the automatic dismissal of juvenile petitions and sealing of records, as specified, in cases where a juvenile successfully completes

probation and authorizes the juvenile court to dismiss a petition, as specified, after a person reaches the age of 21. Specifically, this new law:

- Requires the court to order a juvenile petition dismissed, and the arrest upon which the judgment was deferred to be deemed not to have occurred, if the minor satisfactorily completes (i) an informal program of supervision, as specified; (ii) probation, as specified; or (iii) a term of probation for any offense other than a specified serious, sexual, or violent offense.

- Requires the court to seal all records in its custody pertaining to a petition dismissed according to the above provision, except that the prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment, and the court may access the sealed file for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction.

- Removes the restriction that a person be under the age of 21 when a juvenile court dismisses a juvenile delinquency petition based on the court's finding that the dismissal serves the interests of justice and the welfare of the person who is the subject of the petition, or that he or she is not in need of treatment or rehabilitation.

- Provides that the above provision is not to be interpreted to require the court to maintain jurisdiction over a person who is the subject of a petition between the time the court's jurisdiction over that person terminates and the point at which his or her petition is dismissed.

Criminal Actions: Dismissal

Existing law provides that a judge or magistrate may, either on his or her motion or upon the application of the prosecuting attorney, and in furtherance of justice, order that a criminal action be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes.

The requirement to state the reasons serves two main purposes, to promote judicial accountability by requiring courts to explain why such a power was exercised and to facilitate appellate review of the reasons for dismissal. However, due to the lack of flexibility to the courts, this mandate has led to costly and extraneous proceedings, when a simple solution is known. Recent cuts to the judiciary have forced our courts to come up with efficiencies that will save time, money, and resources while preserving justice.

SB 1222 (Block), Chapter 137, allows a court to orally state the reason for the dismissal of an action on the record, and must set forth the reasons in an order entered upon the minutes if requested by either party.

Criminal Procedure: Incompetency

California law prohibits a person from being tried or punished for a criminal offense while that person is mentally incompetent. Through the 2011 Realignment Legislation addressing public safety, two new classes of supervision were created: mandatory supervision and postrelease community supervision (PRCS). While existing law relative to incompetency applies to criminal trials and probation revocation hearings, it is silent with respect to revocation hearings for offenders on PRCS or mandatory supervision, as there were no corresponding changes made to the law governing competency when realignment was enacted. As a result, there is no lawful mechanism to assist an individual when a judge or attorney suspects that he or she may not be competent to understand the proceedings or assist his or her attorney in a PRCS or mandatory supervision revocation hearing.

SB 1412 (Nielsen), Chapter 759, applies procedures relative to persons who are incompetent to stand trial (IST) to persons who may be mentally incompetent and face revocation of probation, mandatory supervision, PRCS, or parole. Specifically, this new law:

- Provides that only a court trial is required to determine competency in any proceeding for a violation of probation, mandatory supervision, PRCS, or parole.
- Requires a defendant committed to a mental health facility who has not recovered competency to be returned to the committing court no later than the shorter of the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision or other terms specified in existing law.
- Requires the court to reinstate mandatory supervision in a proceeding alleging a violation of that supervision if the person is not placed under a conservatorship, as described, or if a conservatorship is terminated.
- Allows the court, when reinstating mandatory supervision, to modify the terms and conditions of mandatory supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.
- Requires the court, if the defendant is found mentally incompetent during a PRCS or parole revocation hearing, to dismiss the revocation hearing and return the defendant to supervision. Allows the court, except as specified, if the revocation hearing is dismissed because of the defendant's incompetency, to, using the least restrictive option to meet the defendant's mental health needs, do any of the following:
    - Modify the terms and conditions of supervision to include appropriate mental health treatment;

- Refer the matter to any local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant; or,

- Refer the matter to the public guardian of the committing county to initiate conservatorship proceedings, as specified. Provides that the court is to use this option only if there are no other reasonable alternatives to establishing a conservatorship to meet the defendant's mental health needs.

- Prohibits, if a conservatorship is established as specified in the provisions above, the county or the California Department of Corrections and Rehabilitation from compassionately releasing the defendant or parolee or otherwise causing the termination of his or her supervision or parole based on the establishment of the conservatorship.

- Repeals law held unconstitutional relative to misdemeanor-only provisions in IST cases.

- Makes conforming changes to apply procedures relative to persons who are IST to persons who may be mentally incompetent and face revocation of probation, mandatory supervision, PRCS, or parole.

DNA

DNA Evidence

In cases involving sexual assault, DNA is gathered from a victim in a specialized forensic medical examination. The forensic evidence is then collected and packaged in what is commonly referred to as a rape kit. Once booked into evidence by law enforcement, the rape kit can be sent to a crime lab for processing and DNA analysis. At the crime lab, a DNA profile can be created if sufficient DNA from a perpetrator is found, and the perpetrator's DNA profile can be uploaded into the FBI's national DNA database, (Combined DNA Index System) CODIS.

Untested rape kits mean lost opportunities to develop DNA profiles, search for matches, link cold cases, prosecute offenders, bring resolution to rape victims and prevent sexual assault crimes by serial sex offenders. Current state law provides a ten year-statute of limitations for most rape cases, which allows criminal charges to be filed within one year of the date when the suspect is conclusively identified for cases involving DNA evidence but only if the DNA is analyzed within two years of the crime.

AB 1517 (Skinner), Chapter 874, sets timelines for law enforcement agencies and crime labs to perform and process DNA testing of rape kit evidence. Specifically, this new law:

- Encourages a law enforcement agency to rape kit evidence received by the agency on or after January 1, 2016, to the crime lab within 20 days after it is booked into evidence, and ensure that a rapid turnaround DNA program, as defined, is in place to submit forensic evidence collected from the victim of a sexual assault to the crime lab within 5 days after the evidence is obtained from the victim;

- Encourages the crime lab, with respect to rape kit evidence received by the lab on or after January 1, 2016, to process that evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence, or to transmit the rape kit evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence;

- Clarifies that the provisions do not require a lab to test all items of forensic evidence obtained in a sexual assault forensic evidence examination;

- Provides that these provisions do not require a DNA profile to be uploaded into CODIS if the DNA profile does not meet federal guidelines regarding the uploading of DNA profiles into CODIS;

- States that for specified sex offenses, if the law enforcement agency does not analyze DNA evidence within six months of the time limits established under existing law, the law enforcement agency shall inform the victim, either orally or in writing, of that fact; and,

- Deletes the requirement under existing law that the identity of the perpetrator must be in issue, for cases involving a specified sex offense, in order to require a law enforcement agency to inform the victim that the agency has not analyzed the DNA evidence.

DNA: Testing, Research, or Experimentation

The Department of Justice maintains a repository of more than 1.8 million DNA samples from individuals detained for allegedly committing a criminal offense. Recent court rulings have determined that it is constitutional for law enforcement to maintain DNA samples of arrestees indefinitely, even if a person was never convicted of a crime. These genetic samples contain an individual's entire genome and could be tested to reveal traits related to ethnicity, health, and behavior. While the department may perform DNA analyses only "for identification purposes," this term is not defined and could include research into the link between genes and criminal behavior. Existing law authorizes the department to use its samples for research purposes, and its vast collection of DNA samples provides the means to study how genetic profiles could help preemptively identify individuals predisposed to criminal behavior. The ability of this research to identify likely and potential criminals will increase dramatically as researchers gain the means to track the interaction of thousands of gene variants across millions of samples and correlate these results with known criminal behaviors. The Department of Justice DNA repository offers that capability.

AB 1697 (Donnelly), Chapter 454, prohibits the DNA and forensic database and data bank and the Department of Justice DNA Laboratory from being used as a source of genetic material for testing, research, or experiments by any person, agency, or entity seeking to find a causal link between genetics and behavior or health.

Post-Conviction Procedure: DNA Testing

In 2000, the legislature established a new process that allowed a defendant to make a written motion to the trial court that entered the judgment of conviction in his or her case for the performance of DNA testing; prior to this time, defendants in California had no right to post-conviction discovery nor any procedure for letting courts evaluate whether a defendant should have post-conviction testing of DNA. The law, however, does not state clearly that an individual requesting testing is entitled to find out if evidence is available and testable, and some prosecutors, law enforcement agencies, and courts have been confused as to whether they must grant access. Consequently, obtaining testing remains difficult and time consuming and courts have struggled to effectively read this law.

SB 980 (Lieu), Chapter 554, revises the process for obtaining a court order authorizing post-conviction forensic deoxyribonucleic acid (DNA) testing. Specifically, this new law:

- Allows the court to order a hearing on a motion for DNA testing, and allows the court, upon request of the convicted person or his or her attorney, to order the prosecutor to make all reasonable efforts to obtain, and police agencies and law

enforcement laboratories to make all reasonable efforts to provide, copies of DNA lab reports, chain of custody logs, and other specified documents in their possession or control.

- Requires a custodian of record to submit a report to the prosecutor and the convicted person or his or her attorney that sets forth the efforts that were made in an attempt to locate evidence if the evidence has been lost or destroyed. Requires, except as specified, the report to include the results of a physical search if the last known or documented location of the evidence prior to its loss or destruction was in an area controlled by a law enforcement agency.

- Provides that, in seeking the granting of the DNA testing, the convicted person is only required to demonstrate that the testing would be relevant to, rather than dispositive of, the issue of identity and that the convicted person is not required to show a favorable DNA test would conclusively establish his or her innocence.

- Prohibits the court, in determining whether the convicted person is entitled to develop potentially exculpatory evidence, from deciding whether the convicted person is entitled to some form of ultimate relief.

- Requires the testing to be conducted by a laboratory that meets the Federal Bureau Investigation Director's Quality Assurance Standards, whether mutually agreed upon by the parties or designated by the court. Specifies that laboratories accredited by listed entities satisfy this requirement. Prohibits a laboratory selected to perform testing but which is not a National DNA Index System (NDIS) participant from initiating analysis until documented approval has been obtained from an appropriate NDIS participating laboratory of acceptance of ownership of the DNA data that may be entered into or searched in the Combined DNA Index System (CODIS). Allows the laboratory to communicate with either party, upon request, during the testing process.

- Allows the court to conduct a hearing to determine if a DNA profile of an unknown contributor generated from the testing should be uploaded into the State Index System, and if appropriate, the National Index System. Allows the court to issue an order directing the uploading of the profile upon the satisfaction of specified conditions, so long as it does not violate any CODIS or state rule, policy or regulation. Requires notice of the hearing be provided to specified parties 30 court days prior to the hearing.

- Extends the period, as specified, that a government entity must wait to dispose of biological material relating to a case if the entity does not receive specified requests or court filings.

DOMESTIC VIOLENCE

Domestic Violence: Advisory Council

The Domestic Advisory Council (DVAC) brings a statewide voice to domestic violence victims and survivors. In collaboration with the Office of Emergency Services (OES), the DVAC ensures the safety and security of all domestic violence victims through the development of policies, procedures and priorities to promote effective and accessible services for victims. The DVAC ensures that Cal OES administers funding programs and are effectively responding to the needs of victims and survivors across the state.

DVAC is composed of not more than 13 voting members and two non-voting members. Seven of the voting members are appointed by the Governor, three by the Speaker of the Assembly, and three by the Senate Rules Committee. The two non-voting members are members of the Legislature. At least half of the council membership must consist of victims' advocates or domestic violence service providers. Legislative intent expresses that membership on the council reflect the ethnic, racial, cultural, and geographic diversity of the state, including people with disabilities.

Under current law the DVAC remains in existence only through January 1, 2015.

> **AB 1547 (Gomez), Chapter 153,** eliminates the January 1, 2015 sunset date for the Domestic Violence Advisory Council, allowing it to remain in effect indefinitely.

Restraining Orders: Children

Existing law authorizes a court with jurisdiction over a criminal matter to issue specified protective orders upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, including an order protecting a victim of violent crime from all contact by the defendant.

In cases of domestic violence, if a child was present during the crime, but not listed as a victim of actual physical abuse, the court will not issue a protective order for the child unless there is a showing of good cause that the defendant will attempt to dissuade the child from testifying. Minors who are present during domestic violence are almost always the children of the abused, abuser, or both, and almost invariably the emotional and psychological victims of the abuse. Some of these are infants and young children who cannot attest to the abuse.

> **AB 1850 (Waldron), Chapter 673,** provides that a minor who was not a victim but was physically present at the time of an act of domestic violence, is deemed to have suffered harm for the purpose of issuing a protective order in a pending criminal case, as specified.

Domestic Violence: Restraining Orders

In domestic violence cases, courts may issue orders to protect spouses during criminal proceedings, and for up to 10 years after abusers are convicted. However, this protection does not extend to all children because the definition of domestic violence in the Penal Code requires the parties to be married, or formerly married, or have had a dating relationship. The definition found in the Family Code is much broader and includes children and other persons related to one of the parties.

Due to this difference, in criminal cases, judges will not issue a protective order for child victims. Often times the only recourse available is for family members to request a new order to protect children in family court, which is time-consuming and difficult, putting children at risk unless and until a new order to protect children is issued.

> **SB 910 (Pavley), Chapter 638,** expands the definition of domestic violence for purposes of a court's ability to issue restraining orders in domestic violence cases to include abuse perpetrated against a child of a party to the domestic violence proceedings or a child who is the subject of an action under the Uniform Parentage Act, as specified, or against any other person related to the defendant by consanguinity or affinity within the second degree.

ELDER ABUSE

Family Justice Centers

There are currently no standards in California law to govern the relationship between service providers and law enforcement elements working under the same roof in a Family Justice Center (FJC). Each service provider at a FJC is bound by the standards of their respective profession; however, there is currently no over-arching structure in law defining the boundaries between these partnerships.

AB 1623 (Atkins), Chapter 85, authorizes a local government or nonprofit organization to establish a FJC to assist crime victims. Specifically, this new law:

- Authorizes a city, county, city and county, or community-based nonprofit organization to establish a FJC to assist victims of domestic violence, sexual assault, elder and dependent adult abuse, and human trafficking to ensure victims of abuse are able to access all needed services in one location.

- Provides that staff members at a FJC may be comprised of, but are not limited to, the following: law enforcement personnel; medical personnel; victim-witness program personnel; domestic violence shelter staff; community-based rape crisis, domestic violence, and human trafficking advocates; social service agency staff members; child welfare agency social workers; county health department staff; city or county welfare and public assistance workers; nonprofit agency counseling professionals; civil legal service providers; supervised volunteers from partner agencies; and, other professionals providing services.

- Prevents a FJC from denying crime victims services on the grounds of criminal history. Prohibits criminal history searches from being conducted on a victim at a FJC as a condition of receiving services within a FJC without the victim's written consent, unless the criminal history search is pursuant to an active criminal investigation.

- Provides that crime victims are not required to participate in the criminal justice system or cooperate with law enforcement in order to receive counseling, medical care, or other services at a FJC.

- Requires each FJC to develop policies and procedures, in collaboration with local community-based crime victim service providers and local survivors of violence and abuse, to ensure coordinated services are provided to victims and to enhance the safety of victims and professionals at the center who participate in affiliated survivor-centered support or advocacy groups.

Peace Officer Training: Elder and Dependent Adult Abuse

As of 2010, there were 4.2 million people aged 65 years or older in CA. Based on monthly reports sent by local Adult Protection Services offices, the Attorney General estimates that 200,000 elders or dependent adults are abused each year. By the year 2021, the elder population in California will reach 7.7 million people, as the last parts of the Baby Boomer generation reach 65. Given the projected rise in the elder population, the so-called "Silver Tsunami," there will likely be a proportional rise in the number of elder abuse cases.

AB 2623 (Pan), Chapter 823, expands the scope of the Commission on Peace Officer Standards and Training (POST) course related to elder and dependent adult abuse, and requires POST consult with specified local agencies when producing new or updated elder or dependent adult abuse training materials. Specifically, this new law:

- Expands the POST certified training course on elder and dependent adult abuse, to include, the legal rights and remedies available to victims of elder or dependent adult abuse, including, emergency protective orders and the option to request a simultaneous move-out order, and temporary restraining order.

- Requires POST to consult with local adult protective services offices, and the Office of the State Long Term Ombudsman when producing new and updated training materials related to elder and dependent adult abuse.

EVIDENCE

Condoms: Evidence

Human Rights Watch (HRW), released a report in July 2012 titled *"Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities"* which reviewed research literature on sex workers in Los Angeles and San Francisco and conducted its own interviews with persons either in sex trades or in organizations that provide health and social services to that population. In addition to specific cases in which possession of condoms was used as evidence of prostitution, HRW found that the threats of harassment of sex workers about possessing condoms had resulted in a prevalent belief that one is risking arrest and prosecution as a prostitute by having any condoms in one's possession when approached by law enforcement. As a result, many sex workers will no longer carry any condoms or a sufficient number of condoms, thereby creating multiple opportunities for transmission of HIV to and from the sex worker.

In San Francisco, a 1995 decision by the District Attorney and police generally ended the practice of using condoms as evidence of prostitution. However, in the ensuing nearly two decades, that practice reasserted itself in direct contradiction to city and county policy. As a result, the police were forced again to declare that they would no longer use condoms as evidence of prostitution. However, what San Francisco's history demonstrates is that in the absence of a statutory prohibition, the practice will emerge again once attention is directed elsewhere. In Los Angeles, sex workers report that it is common knowledge that carrying more than 2 or 3 condoms could get you arrested for prostitution. As a result, many do not use condoms.

> **AB 336 (Ammiano), Chapter 403,** requires that if the prosecution intends to use evidence of condom possession by the defendant as evidence in a prostitution case, the evidence can only be admitted through the following process: the prosecutor must file a written motion and offer of proof, with a sealed affidavit, arguing the relevance of the evidence; the court must review the offer of proof to determine if there are grounds for a hearing on the admissibility of the condom evidence; if the court finds there is some basis for the evidence, it shall hold a hearing to determine if the evidence is relevant and not overly prejudicial.

Conditional Examinations: Human Trafficking

Existing law provides that when a defendant has been charged with any crime, he or she in all cases, and the people in cases other than those for which the punishment may be death, may if the defendant has been fully informed of his right to counsel, may have witnesses examined conditionally in his or her or their behalf, as prescribed.

States that when a defendant has been charged with a serious felony, as defined, or in a case of domestic violence, the people or the defendant may, if the defendant has been fully informed of his right to counsel, as provided by law, have a witness conditionally examined if there is

evidence that the life of the witness is in jeopardy.

> **AB 1610 (Bonta), Chapter 709,** provides that if a defendant has been charged with human trafficking, and there is evidence that the victim or a material witness is being dissuaded from testifying at trial, or there is a reasonable basis to believe that the witness will not attend the trial because he or she is under the direct control of the defendant or another person involved in human trafficking and, by virtue of this relationship, the defendant or other person seeks to prevent the witness from testifying, and if the defendant is fully informed of his or her right to counsel, the court may have the witness examined conditionally.

Sex Crimes: Preservation of Testimony

In limited sex offense cases, current law allows victims' testimony to be taken at a preliminary hearing to be recorded and preserved on "videotape" (VHS). Victims who are younger than 16, developmentally disabled, or who have suffered rape or corporal injury at the hands of a spouse when certain circumstances are met, can have their testimony recorded and presented on VHS in front of the judge, defense, and jury at trial.

According to statute, videotapes, not video-recordings, of testimony are allowed to be shown when the court finds further in-person testimony would cause the victim severe emotional trauma. However VHS is quickly becoming an antiquated form of technology.

Most video cameras manufactured today record to a hard drive or another type of removable media card. Advances in technology have enabled cameras and video cameras to make digital video recordings. To use any other form of video, such as a digital recording, the district attorney prosecuting the case may need to put the request in writing, notice the defense attorney, and litigate the issue in front of the judge. This can unnecessarily delay the trial at a time when our courts are already inundated with cases.

> **AB 1900 (Quirk), Chapter 160,** allows a court to preserve testimony by any means of video-recording that complies with specified recording and preservation requirements as opposed to videotape only.

Wiretapping: Authorization

Existing law authorizes the Attorney General (AG), chief deputy attorney general, chief assistant attorney general, district attorney or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire, electronic digital pager, or electronic cellular telephone communications under specified circumstances. The provisions governing wiretap authorizations sunset on January 1, 2015.

The continuation of the California State Wiretap Statute, which includes both telephone and electronic communication technologies, will permit law enforcement to continue wiretap investigations under specified circumstances with judicial approval. California and federal law enforcement agencies and multi-agency task forces have used the law with great success since its

enactment in 1989 to solve the most serious and difficult crimes, such as organized crime and drug trafficking, while maintaining an emphasis on the protection of individual privacy.

> **SB 35 (Pavley), Chapter 745**, extends the sunset date until January 1, 2020 on provisions of California law which authorize the AG, chief deputy AG, chief assistant AG, district attorney or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire or electronic communications under specified circumstances

Government Search: Fourth Amendment

The U.S. Constitution provides that it and other federal laws are the supreme law of the land. The 4th Amendment to the U.S. Constitution sets forth the right against unreasonable searches and seizures by the federal government and prohibits a federal warrant from being issued unless there is probable cause, supported by an oath or affirmation, that particularly describes the place to be searched, and the person or thing to be seized. Recently, the federal government has collected phone record data on telephone calls made or received by American citizens. Moreover, federal surveillance programs on Americans extend to not just phone records but also to all types of electronic data, including emails, text messages, and information stored on smart phones. To collect electronic and metadata information, the federal government sometimes relies upon services provided by the state.

> **SB 828 (Lieu), Chapter 861,** prohibits the state from providing material support, participation, or assistance in response to a request from a federal agency or an employee of a federal agency to collect the electronically stored information or metadata of any person if the state has actual knowledge that the request constitutes an illegal or unconstitutional collection of electronically stored information or metadata.

Wiretapping: Human Trafficking

Existing law authorizes the Attorney General (AG), chief deputy attorney general, chief assistant attorney general, district attorney or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire, electronic digital pager, or electronic cellular telephone communications under specified circumstances.

Existing law authorizes the court to issue an order authorizing interception of those communications if the judge finds, among other things that there is probable cause to believe that an individual is committing, has committed, is about to commit, one of several offenses, including among others, possession for sale of certain controlled substances, murder, and certain felonies involving destructive devices.

> **SB 955 (Mitchell), Chapter 712,** adds human trafficking to the list of offenses for which interception of electronic communications may be ordered pursuant to the above provisions.

False Evidence: Writ of Habeas Corpus

Existing law authorizes every person unlawfully imprisoned or restrained of his or her liberty, under any pretense, to prosecute a writ of habeas corpus for specified reasons, including when false evidence that is substantially material or probative on the issue of guilt or punishment was introduced against the person at any hearing or trial relating to his or her incarceration.

In 2012, the California Supreme Court held that in a habeas petition the "false evidence" standard is not met just because new technology causes an expert to reject his or her earlier testimony. (*In re Richards* (2012) 55 Cal.4th 948.) The court held the fact that the expert has changed his or her opinion has no bearing on the validity of the original opinion.

Prior to the *Richards* decision, individuals could and often did successfully challenge their convictions when the evidence underlying their original conviction has been substantially undermined by scientific and technological advances. Following the *Richards* decision, a case involving an expert witness whose testimony serves as the primary basis for a conviction – and who later realizes the analysis was wrong – cannot be reversed, no matter how egregious the false testimony.

> **SB 1058 (Leno), Chapter 623,** provides, for purposes of a writ of habeas corpus, that false evidence includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.

FINES AND FEES

Wires: Unlawful Removal

In Humboldt County, Suddenlink Communications has been the victim of multiple intentional fiber cutting attacks resulting in the loss of services including cable, internet, and cell phone service to over 10,000 customers on several occurrences. In other incidents throughout California, cable nodes have been vandalized and cable amplifiers and emergency backup batteries have been stolen, resulting in the loss of communications services, including the ability to make emergency 911 calls, for thousands of residential and business customers. Dependable communication services are critical for public safety, national security and California's economic growth and sustainability. Current law limits the penalty to $500 or up to one year in county jail which has not served as a deterrent to this type of crime.

AB 1782 (Chesbro), Chapter 332, makes the following changes in the alternate felony-misdemeanor statute that prohibits removing, destroying, obstructing use of or damaging, any communications line or line used to conduct electricity, or connecting without authorization to a line used to conduct electricity. Specifically, this new law:

- Adds or includes the acts of disconnecting or cutting a specified communications line or line used to conduct electricity.
- Includes a backup deep cycle battery or other connected power supply in the devices covered by the law prohibiting and punishing the act of removing, damaging or obstructing a specified communications line or line used to conduct electricity.
- Increases the maximum fine for the offense from $500 to $10,000 per incident.

Mandatory Supervision: Fees

Existing law authorizes a trial court to order a defendant to pay the reasonable cost of supervision when probation is granted or a conditional sentence is imposed. Existing law takes into account a defendant's ability to pay using a mechanism to determine the appropriate amount that a defendant should be charged. (Penal Code 1203.1b.)

The mandatory supervision population deadline is a similarly situated population to those on probation or who receive a conditional sentence. However, two recent appellate court decisions held that the probation supervision fee may not be applied to the mandatory supervision portion of a split sentence because the plain language of the pertinent statute does not expressly reference mandatory supervision, and mandatory supervision is neither a grant of probation nor a conditional sentence. (See *People v. Fandinola* (2013) 221 Cal.App.4th 1415; and *People v. Ghebretensea* (2013) 222 Cal.App.4th741.)

Probation officers argue these rulings have the potential to disincentivize split sentences, resulting in more straight jail sentences due to the cost of supervision. Moreover, supervision

fees can help to cover a portion of the actual costs of providing critical adult field services supervision and programs. Existing law needs updating to account for mandatory supervision offenders who are now under the supervision of local probation departments.

> **AB 2199 (Muratsuchi), Chapter 468,** authorizes probation departments to charge a defendant for all, or a portion of, the reasonable cost of mandatory supervision, subject to the defendant's ability to pay.

Prostitution: Fines

Penal Code section 672 provides that where no other fine is specified, the maximum fine for a felony is $10,000 and the maximum for a misdemeanor is $1,000. While many felony statutes specifically state that the maximum fine for the offense is $10,000, others simply state that the offense is a felony or that an offense punishable pursuant to Penal Code Section 1170, subdivision (h).

> **AB 2424 (Campos), Chapter 109,** increases the maximum fine for abduction or procurement by fraudulent inducement for prostitution from $2,000 to $10,000.

Peace Officer Impersonation: Seizure & Fine

Existing law makes it a crime for a person who is not a peace officer to impersonate a peace officer. Specifically, it is a misdemeanor subject to punishment by up to 6 months imprisonment in a county jail, a fine not exceeding $1,000, or by both, for any person to willfully wear, exhibit, or use any badge, insignia, emblem, device, label, certificate, card, or writing that falsely purports to be authorized for use by a peace officer.

> **SB 702 (Anderson), Chapter 514,** increases the fine for a person impersonating a peace officer to a maximum of $2,000 and requires the local law enforcement agency that files charges for a violation of this crime to seize the item used to carry out the impersonation.

Prostitution

Prostitution can be generally defined as "soliciting or agreeing to engage in a lewd act between persons for money or other consideration." Lewd acts include touching the genitals, buttocks, or female breast of either the prostitute or customer with some part of the other person's body for the purpose of sexual arousal or gratification of either person.

To implicate a person for prostitution themselves, the prosecutor must prove that the defendant "solicited" or "agreed" to "engage" in prostitution. A person agrees to engage in prostitution when the person accepts an offer to commit prostitution with specific intent to accept the offer, whether or not the offerer has the same intent.

For the crime of "soliciting a prostitute" the prosecutor must prove that the defendant requested that another person engage in an act of prostitution, and that the defendant intended to engage in an act of prostitution with the other person, and the other person received the communication

containing the request. The defendant must do something more than just agree to engage in prostitution. The defendant must do some act in furtherance of the agreement to be convicted. Words alone may be sufficient to prove the act in furtherance of the agreement to commit prostitution

A violation of section 647(b) is a misdemeanor. For a first offense conviction of prostitution the defendant faces up to 180 days in jail. If a defendant has one prior conviction of prostitution he or she must receive a county jail sentence of not less than 45 days. If the defendant has two or more prior convictions, the minimum sentence is 90 days in the county jail.

In addition to the punishment described above, if the defendant is conviction of prostitution, he or she faces fines, probation, possible professional licensing restrictions or revocations, possible immigration consequences, possible asset forfeiture, and possible driving license restrictions.

SB 1388 (Lieu), Chapter 714, increases fines related to the solicitation of an act of prostitution with a minor and creates a mandatory minimum sentence of 2 days, as specified. Specifically, this new law:

- Provides that a person who solicits a minor for an act of prostitution shall serve a minimum of two days in a county jail, and not more than one year.
    - Further specifies up to a $10,000 fine for the solicitation of a minor.
    - Requires that the defendant know, or should have known, that the person solicited is a minor at the time of the offense.
    - Clarifies that a court can reduce or eliminate the minimum mandatory two days in county jail in unusual cases, as specified.
- Increases an existing additional fine of up to $25,000 from $20,000 for placing a minor into prostitution, or furnishing a minor to another person for sexual conduct.

FIREARMS

Firearms: Prohibited Persons

California has several laws that prohibit certain persons from purchasing or possessing firearms. All felony convictions lead to a lifetime prohibition, while specified misdemeanors will result in a 10-year prohibition. A person may be prohibited due to a protective order or as a condition of probation. Another prohibition is based on the mental health of the individual. The Department of Justice developed an automated system for tracking handgun and assault weapon owners in California who may pose a threat to public safety. The system collects information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. The department receives automatic notifications from state and federal criminal history systems to determine if there is a match in the system for a current California gun owner. It also receives information from courts, local law enforcement, and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, the department has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession.

Through legislative prompting, the California State Auditor conducted an audit concerning the reporting and identification of persons with mental illness who are prohibited from owning or possessing a firearm and found that although existing law requires courts to report individuals to the department whenever the courts make certain mental health determinations, many courts were unaware of these requirements.

> **AB 1591 (Achadjian), Chapter 141,** requires a court to notify the Department of Justice within one court day of specified court actions that would result in the prohibition of a person from possessing a firearm or any other deadly weapon or that would result in the person no longer being subject to the prohibition.

Firearms: Direct Shipment

A number of concerns have been raised as to the State's ability under current state code to regulate the activities of California residents going outside of California, acquiring ownership of a firearm, and then physically bringing that firearm back into the state. Federal law in essence mandates "direct ship," which means that guns can be acquired outside of the state. However, to be possessed and received in-state, the transaction has to be brokered through a federal firearms dealer for pickup in accordance with California law. That includes background checks, the waiting period, registration, etc. This mandate, stemming from 18 U.S.C. 922(a)(3), (a)(5), and (b)(2), creates certain procedures for bringing firearms across state lines and makes certain firearm transactions illegal.

In 2010, then Attorney General Brown was asked by District Attorney Bob Lee of Santa Cruz County whether in a private party transaction whether the transferee and the transferor each commit the crime if they do not comply with the provisions of "through dealer processing" or an

exemption thereto. (*Attorney General Opinion 10-504*) In October of 2013 after a review of the law in this area, Attorney General Harris opined that it was indeed a violation as to both. The opinion was careful not to opine if the violation was a "continuing offense."

AB 1609 (Alejo), Chapter 878, clarifies the regulations for direct shipment requirements for transfer of ownership of firearms. Specifically, this new law:

- Prohibits a California resident to import, bring or transport into California, any firearm that he or she purchased or otherwise obtained from outside the state unless he or she first has the firearm delivered to a dealer in California. This transaction would be subject to:
    - A 10-day waiting period;
    - A purchaser background check; and,
    - Possession of a handgun safety certificate by the purchaser.
- Makes a violation of these provisions involving a firearm that is not a handgun a misdemeanor, and a violation involving a handgun a misdemeanor or a felony.
- Specifies that the provisions of this bill only apply to the acquisition of firearms from an out of state source after January 1, 2015.
- Provides that a California resident who acquires ownership of a firearm by bequest or intestate succession who imports, brings or transports the firearm into this state is exempt for the prohibition on importing, bringing or transporting firearms into the state, if all of the following conditions apply:
    - If the firearm were physically received within this state, the receipt of that firearm by that individual would be exempt from the provisions requiring transfer through a licensed dealer;
    - Within 30 days of taking possession of the firearm and bringing it into the state, he or she shall forward by prepaid mail, or deliver in person to DOJ, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question;
    - Have or obtain a firearm safety certificate for any firearm, except that in the case of a handgun, an unexpired handgun safety certificate may be used;
    - The receipt of firearms by the individual is infrequent; and,

- The person acquiring ownership of that firearm by bequest or intestate succession is 18 years or age.

- Provides that a California resident who acquires ownership of a firearm as the executor or administrator of an estate, who imports, brings or transports the firearm into this state is exempted from the prohibition on importing, bringing or transporting firearms into the state if all of the following conditions apply:

  - If the firearm was physically received within this state, the receipt of that firearm by that individual would be exempt from the provisions requiring transfer through a licensed dealer;

  - Within 30 days of taking possession of the firearm and bringing it into the state, he or she shall forward by prepaid mail, or deliver in person to DOJ, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question;

  - If the executor or administrator subsequently acquires ownership of that firearm, he or she is required to comply with section 27925; and,

  - The executor or administrator is 18 years of age or older.

- Exempts specified firearms licensees who are on the DOJ centralized list from the prohibition on importing, bringing or transporting firearms into the state.

- Exempts persons who have obtained specified DOJ permits to deliver weapons from the prohibition on importing, bringing or transporting firearms into the state, as specified.

- Exempts transactions in restricted weapons from the prohibition on importing, bringing or transporting firearms into the state, if the transactions comply with the procedure set forth for restricted weapons, as specified.

Code Maintenance

In 2006, the Legislature directed the Law Revision Commission to conduct a study and recommend nonsubstantive changes to the statutes relating to control of deadly weapons to simplify and provide better organization to this area of law. The Law Review Commission was expressly directed not to make any change that would affect the existing scope of criminal liability.

In June 2009, the Law Review Commission submitted its recommendation on *Nonsubstantive Reorganization of Deadly Weapons Statutes* to the Legislature. In 2010, the recommendation was enacted, reorganizing the deadly weapons statutes into a new Part 6 of the Penal Code,

structuring the provisions in a more user-friendly form and making conforming revisions to the law. However, there were some minor issues that could not be addressed without potentially causing concern about the possibility of a substantive change. Those issues were identified to the Legislature in the recommendation and set aside as possible future work.

The Legislature granted the Law Review Commission authority to study and make recommendations on those minor issues identified. Pursuant to that authority, the Law Revision Commission recommended minor clean-up amendments to address some of the issues identified.

AB 1798 (Committee on Public Safety), Chapter 103, makes technical, nonsubstantive changes to provisions of law related to deadly weapons. Specifically, this new law:

- Clarifies that the definitions of "application to purchase," "firearm safety device," "locked container," "short-barreled rifle," and "short-barreled shotgun" covers the entirety of Part 6 of the Penal Code related to Control of Deadly Weapons;
- Standardizes references to certain organizations and persons;
- Recasts language in statutes into separate subdivisions to increase readability; and
- Delete an obsolete cross-reference.

Unsafe Handguns: Single-Shot Pistols

Existing law provides that the sale, loan, or transfer of firearms must be processed by, or through, a state licensed dealer or a local law enforcement agency. Existing law also provides that no "unsafe handgun" may be manufactured or sold in California by a licensed dealer, as specified, and requires that the Department of Justice (DOJ) prepare and maintain a roster of handguns which are determined to be safe. "Unsafe handguns" are defined as those which do not have requisite safety devices, do not meet specified firing tests, or do not meet a drop safety test, and therefore do not appear on the DOJ safe handgun roster.

Since the enactment of the Unsafe Handgun law, the statute has been amended a number of times to add exemptions to the prohibitions on buying and selling the affected weapons. One of the most significant loopholes in the Unsafe Handgun law concerns single shot handguns. In effect, a person may purchase a handgun which is manufactured or altered to only accept a single bullet (no semi-automatic reload of a bullet in the firing chamber), even if the handgun is considered by DOJ as unsafe, (i.e. not meeting state safe handgun requirements, and therefore not on the state safe handgun roster).

Up until 2009, no more than 1100 single shot handguns which did not contain state required safety features or failed state safety tests, were purchased and registered each year, often far fewer than that. However, beginning in 2010, the number of unsafe single shot handguns purchased and registered skyrocketed. In 2013 alone, more than 18,000 of these weapons were purchased in California.

The jump in the purchase of unsafe single shot handguns coincides with the enactment of new handgun safety requirements such as bullet chamber load indicators and micro-stamping of bullets. In essence, more people are using the exemption to acquire guns they would otherwise be unable to legally purchase if the gun was bought in its original semi-automatic configuration.

The conversion of semi-automatic handguns to single shot handguns can be easily undone by a buyer or the dealer after the buyer takes delivery of the weapon. Reconverting a single shot handgun into its original semi-automatic configuration undermines the state Unsafe Handgun Law and results in an increasing number of handguns being obtained that do not meet state safety requirements.

> **AB 1964 (Dickinson), Chapter 147,** makes the provisions regulating unsafe handguns inapplicable to a single-shot pistol with a break top or bolt action. Specifically, this new law: makes this exemption from the unsafe handgun list inapplicable to a semiautomatic pistol that has been temporarily or permanently altered so that it will not fire in a semiautomatic mode.

BB Devices

Existing state and federal law generally prohibits anyone from purchasing, selling, manufacturing, shipping, transporting, distributing, or receiving an imitation firearm, unless such device has affixed to it a bright orange plug or the entire exterior of the device is translucent or brightly colored. BB devices are excluded from the definition of imitation firearm for these purposes.

Imitation guns are deliberately fabricated to be indistinguishable from real firearms. Law enforcement officers have extreme difficulty distinguishing these fake guns from lethal weapons, particularly when officers must react within seconds to emergency situations. One of the primary dangers posed by replicas is that such guns are used by children and young adults who may not comprehend the seriousness of displaying them around unsuspecting law enforcements officers or around armed individuals. As a result, officers and community residents can find themselves in precarious situations when unable to distinguish replica guns from handguns and assault weapons.

> **SB 199 (De León), Chapter 915,** beginning January 1, 2016, requires airsoft guns that expel a projectile, such as a BB or a pellet, that is six millimeters (mm) or 8mm, in addition to the blaze orange ring on the barrel as required by federal law, to have fluorescent coloration over the entire trigger guard and a fluorescent adhesive band on the airsoft gun prior to sale to a customer, as specified.

Welfare Checks: Firearms

Current law authorizes, upon probable cause, a peace officer or other specified mental health treatment individuals to take, or cause to be taken, a person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment when the person, as a result of a mental health disorder, is a danger to himself, herself,

or others, or is gravely disabled. Additionally, existing law requires that whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person that is a danger to himself, herself, or others as a result of a mental illness or disorder, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon be confiscated by any law enforcement agency or peace officer, who is required to retain custody of the weapon.

SB 505 (Jackson), Chapter 918, requires every law enforcement agency to develop, adopt, and implement written policies and standard protocols pertaining to the best manner to conduct a "welfare check" when the inquiry into the welfare or well-being of the person is motivated by a concern that the person may be a danger to himself or herself or to others, and requires that the policies encourage a peace officer, prior to conducting the welfare check and whenever possible and reasonable, to conduct a search of the state's firearms database to determine whether the subject of the welfare check is a registered firearm owner.

JUVENILES

Juveniles: Sex Offenses

Existing law provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, except as specified. When a minor is adjudged a ward of the juvenile court, the court may order certain types of treatment, and as an additional alternative, may commit the minor to a juvenile home, ranch, camp, or forestry camp, or the county juvenile hall. For minors who have committed felony offenses, the court may order deferral of judgment (DEJ) if specified conditions are met. Juvenile court hearings are closed to the public, except for juvenile court hearings alleging the commission of specified felonies.

SB 838 (Beall), Chapter 919, reduces confidentiality protections juveniles who have committed or who are alleged to have committed specified sex crimes involving an unconscious or disabled victim, as specified. Specifically, this new law:

- Adds to the list of felonies, to which the public may be admitted for the juvenile court proceedings, certain sex offenses accomplished because the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense;

- Requires a minor to complete a sex offender treatment program when a minor is adjudged or continued as a ward of the court for the commission of specified sex offenses, if the court determines, in consultation with the county probation officer, that suitable programs are available;

- States that the court shall consider certain factors, in addition to any other relevant information presented, in determining what type of sex offender treatment program is appropriate for the minor;

- Requires a minor completing a sex offender treatment program to pay all or a portion of the reasonable costs of the program after a determination is made if the ability of the minor to pay; and,

- Makes ineligible for DEJ juveniles who have committed or who are alleged to have committed specified sex crimes involving an unconscious or disabled victim, as specified.

Juveniles: Sealing of Records

Current law allows the automatic sealing of certain juvenile records upon the completion of a probationary term imposed by the court. These automatic provisions apply to felonies as well as misdemeanors. For other cases, including less serious offenses, minors must wait until they are 18 years old or five years after jurisdiction is terminated before they can file a petition to seal their records. Because the petition to seal requires the involvement of the probation department, the prosecutor, and the court, often times there are lengthy delays as well as significant costs associated with sealing. Moreover, many youth are unaware of their right to petition or may have moved out of state and are unable to complete the process. Current law also authorizes a court to approve the dismissal of a petition, or set aside the findings and dismiss the charges in a delinquency case, if the court finds it is in the interest of justice and the welfare of the minor, or if it finds the minor is not in need of additional treatment or rehabilitation. This option, however, is available only until the subject of the record reaches the age of 21.

SB 1038 (Leno), Chapter 249, provides for the automatic dismissal of juvenile petitions and sealing of records, as specified, in cases where a juvenile successfully completes probation and authorizes the juvenile court to dismiss a petition, as specified, after a person reaches the age of 21. Specifically, this new law:

- Requires the court to order a juvenile petition dismissed, and the arrest upon which the judgment was deferred to be deemed not to have occurred, if the minor satisfactorily completes (i) an informal program of supervision, as specified; (ii) probation, as specified; or (iii) a term of probation for any offense other than a specified serious, sexual, or violent offense.

- Requires the court to seal all records in its custody pertaining to a petition dismissed according to the above provision, except that the prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment, and the court may access the sealed file for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction.

- Removes the restriction that a person be under the age of 21 when a juvenile court dismisses a juvenile delinquency petition based on the court's finding that the dismissal serves the interests of justice and the welfare of the person who is the subject of the petition, or that he or she is not in need of treatment or rehabilitation.

- Provides that the above provision is not to be interpreted to require the court to maintain jurisdiction over a person who is the subject of a petition between the time the court's jurisdiction over that person terminates and the point at which his or her petition is dismissed.

Juvenile Justice Recommendations & Mentally-Ill Offender Crime Reduction

Existing law establishes, within the Board of State and Community Corrections, the California Juvenile Justice Data Working Group (CJJDWG), and the working group is required, among other things, to recommend a plan for improving specified juvenile justice reporting requirements, including streamlining and consolidating requirements without sacrificing meaningful data collection. The working group is required to submit its recommendations to the board no later than December 31, 2014.

Additionally, existing law requires the board to administer mentally ill offender crime reduction grants on a competitive basis to counties that expand or establish a continuum of timely and effective responses to reduce crime and criminal justice costs related to mentally-ill juvenile and adult offenders. The grants administered by the board are required to be divided between adult and juvenile mentally-ill offender crime reduction grants in accordance with the funds appropriated for each type of grant.

> **SB 1054 (Steinberg), Chapter 436,** extends a recommendations plan deadline for the CJJDWG to April 30, 2015 and clarifies that the mentally-ill offender crime reduction grants be divided equally among adult and juvenile programs.

Juveniles: Truancy

California requires all people between the ages of 6 and 18 years of age to compulsory, full-time education unless otherwise exempted by law. Students between the ages of 16 and 18 may attend school part-time if they participate in a continuation school program. Exemptions exist for minors who have graduated high school, met proficiency standards for high school equivalency criteria, and participate in specified Regional Occupational Programs.

Students who have more than three unexcused absences or are late by more than 30 minutes for three days are considered truant. By law, a school district is required to notify the parents of a truant student that they are required to compel their child to attend school.

Children who are truant three or more times can be determined "habitual truants." Habitual truants can be referred to attendance review boards, the district attorney, or the juvenile probation department. Parents of truants may be prosecuted for infractions and subjected to fines if found guilty.

> **SB 1296 (Leno), Chapter 70,** prohibits secured detention as a sanction for truants who are found in contempt of court solely on the grounds of failing to comply with a court order relating to the truancy. Specifically, this new law:
>
> - Revises legislative intent language to state that minors adjudged wards of the court solely because of truancy shall not be held in a secure facility, except for the purposes of school attendance.

- Enacts a new statute providing that a person under 18 years of age shall not be detained in a secure facility, solely upon the ground that he or she is in willful disobedience or interference with any lawful order of the juvenile court, if the basis of an order of contempt is the failure to comply with a court order pursuant to truancy.
- Provides that, notwithstanding any other law, a court shall not imprison, hold in physical confinement, or otherwise confine or place in custody a minor for contempt if the contempt consists of the minor's failure to comply with a court order relating to truancy, if the minor was adjudged a ward of the court on the ground that he or she is a truant.

LAW ENFORCEMENT

Peace Officers: Firearm Training

Under existing law, peace officers are required to complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training (POST) prior to exercising the powers of a peace officer. This training requirement includes the Arrest and Firearms Course. All sworn probation employees must complete this training. Only providers certified through POST can offer these courses.

It has been difficult for some county probation departments to complete the required training as a result of limited dates and locations of course offerings. Often, courses are held in locations that require extensive travel and time off to complete. Further, course can be impacted based on the number of slots available to law enforcement agencies and the general public. Regionally, many probation departments are challenged in getting their deputies into available courses in a timely manner.

> **AB 1860 (V. Manuel Pérez), Chapter 87,** provides that a probation department that is a certified provider of a specified peace officer introductory training course on arrests and firearms prescribed by POST is not required to offer the course to the general public.

Medical Technical Assistants: Firearms

In 2012, AB 2623 was introduced to mandate that peace officers working for the Department of State Hospitals (DSH) be permitted to carry firearms regardless of the approval of the agency. It is the current policy of the DSH that peace officers within their facilities and the surrounding areas should not be armed with firearms because it is a therapeutic environment.

> **AB 2506 (Salas), Chapter 820,** permits medical technical assistant series employees designated by the Secretary of the Department of Corrections and Rehabilitation or designated by the secretary and employed by the State Department of State Hospitals as peace officers authorized to carry a firearm while not on duty.

Peace Officer Training: Elder and Dependent Adult Abuse

As of 2010, there were 4.2 million people aged 65 years or older in CA. Based on monthly reports sent by local Adult Protection Services offices, the Attorney General estimates that 200,000 elders or dependent adults are abused each year. By the year 2021, the elder population in California will reach 7.7 million people, as the last parts of the Baby Boomer generation reach 65. Given the projected rise in the elder population, the so-called "Silver Tsunami," there will likely be a proportional rise in the number of elder abuse cases.

> **AB 2623 (Pan), Chapter 823,** expands the scope of the Commission on Peace Officer Standards and Training (POST) course related to elder and dependent adult abuse, and requires POST consult with specified local agencies when producing new or updated elder or

dependent adult abuse training materials. Specifically, this new law:

- Expands the POST certified training course on elder and dependent adult abuse, to include, the legal rights and remedies available to victims of elder or dependent adult abuse, including, emergency protective orders and the option to request a simultaneous move-out order, and temporary restraining order.

- Requires POST to consult with local adult protective services offices, and the Office of the State Long Term Ombudsman when producing new and updated training materials related to elder and dependent adult abuse.

BART: Police Officers

Prior to implementing the prohibition order program, BART was required to establish an advisory commission to monitor the issuance of prohibition orders to ensure compliance with anti-discrimination laws and with providing the governing board of the transit district and the Legislature with an annual report on the program. (Pub. Util. Code § 99172.)

In its recent draft annual report, BART indicates that it issued one hundred and forty-six prohibition orders based on misdemeanor or felony arrests between May 6, 2013, and December 31, 2013. None of the alleged violators contested the order. The top violation was for domestic battery under Penal Code section 243(e)(1). In addition, BART issued six infraction citations over this same period for violations on the list of infractions eligible for a prohibition order. None of the cited offenders repeated the violations three or more times within the 90-day period. This legislation would permit BART to continue issuing these prohibition orders.

SB 1154 (Hancock), Chapter 559, expands the authority given to Bay Area Rapid Transit (BART) police officers to include powers granted similarly situated police officers in other jurisdictions. Specifically, this new law:

- Includes BART police officers in the provisions of law which require every law enforcement agency in the state to develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls that encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. Includes members of the San Francisco Bay Area Rapid Transit District Police Department in the definition of "officers" for the purposes of these provisions.

- Permits officers of the BART Police Department to have the ability to request an ex parte emergency protective order from a judicial officer, if there are reasonable grounds to believe a person is in immediate and present danger of stalking.

- Permits BART police officers, who respond to the scene of a domestic violence incident or assault, to temporarily take custody of any firearms or deadly weapons that are in plain sight or obtained during a lawful search.

- Extends the sunset on the law that allows BART to issue prohibition orders banning persons from entering district property for determined periods of time for specified offenses until January 1, 2018.

Correctional Officers: Napa County

On June 6, 1988, Santa Clara County transferred control of its jails from the sheriff to the county Department of Corrections (DOC). In 1999, Santa Clara was given the ability to utilize enhanced power custodial officers. Santa Clara sought legislative intervention due to years of confusion and litigation regarding the status of the county's custodial officers.

The California Supreme Court held that "[t]he Legislature has made clear its intention to retain the exclusive power to bestow peace officer status on state, county and city employees. Since that chapter [Chapter 4.5 of the Penal Code, sections 830 et seq.] does not authorize the director of a county jail facility to designate custodial officers as peace officers, the director's action cannot be sustained." (*County of Santa Clara v. Deputy Sheriffs' Association of Santa Clara County* (1992) 3 Cal.4th 873, 886.) Santa Clara County found itself in this situation after the voters changed the county charter in 1988 to transfer control of the jails out of the jurisdiction of the sheriff and instead to the county DOC. (*Id.* at p. 876.) The lawful way for Santa Clara County custodial officers to gain peace officer powers not currently granted to them by state law requires enacting another state law. (Assembly Committee on Public Safety Analysis, SB 1019 (Vasconcellos), Chapter 635, Statutes of 1999.)

Like Santa Clara, the Napa County DOC was separated from the Sheriff's Department by the Board of Supervisors in 1975. They were the first in the state of California to become a civilian-run facility, and are currently one of two in the state not operated by the Sheriff's Department. While Napa County has a population less than 425,000, the county is not able to utilize enhanced powers custodial officers because the Penal Code requires that the custodial officers be employed by a law enforcement agency. (*See generally* Pen. Code, § 831.5.)

SB 1406 (Wolk), Chapter 53, permits officers employed by the Napa County DOC to perform additional duties. Specifically, this new law:

- Authorizes, upon a resolution by the Napa County Board of Supervisors, custodial officers employed by the Napa County DOC to perform the same duties as Santa Clara custodial officers.

- Provides that custodial officers employed by Napa County DOC are authorized to perform the following additional duties in the facility:

    - Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;

    - Search property, cells, prisoners, or visitors;

- Conduct strip or body cavity searches of prisoners, as specified;
- Conduct searches and seizures pursuant to a duly issued warrant;
- Segregate prisoners; and,
- Classify prisoners for the purpose of housing or participation in supervised activities.

MENTAL HEALTH

Summary Criminal History Information: State Hospitals

State hospitals are entitled to receive criminal history information for many, but not all, commitments with admissions material received from a court or law enforcement agency. Hospital clinicians, however, have limited or no access to this material. Moreover, the information cannot be included in a patient's confidential file. As more than 96 percent of state hospital admission in 2012 had contact with the criminal justice system, access to summary criminal history information would be useful to State Department of State Hospitals clinicians to complete an accurate violence risk assessment and get a fuller picture of a patient's history.

> **AB 1960 (Perea), Chapter 730,** provides access of state summary criminal history information to a state hospital director or clinician whenever a patient is committed to the State Department of State Hospitals to assess a patient's risk of violence, to assess the appropriate placement of a patient, for treatment purposes of a patient, for use in preparing periodic reports as required by statute, or to determine the patient's progress or fitness for release.

Competency: Involuntary Medication

Under existing law, when a defendant's competency to stand trial is questioned, the judge will order the defendant to undergo an evaluation by a court-appointed mental health expert, followed by a hearing. If the defendant is found incompetent to stand trial, the individual typically is ordered to be transferred to a state hospital for treatment designed to restore competency. Incompetent to stand trial (IST) defendants are housed in the county jail pending the transfer and admission to a state hospital. Currently, the demand for space at state hospitals is greater than the supply of beds, therefore resulting in waiting lists that fluctuate between 300 to 350 defendants at any time. The length of time on the waiting list can vary from a couple of weeks to four to six months. In order to address the shortage of treatment beds, the department has initiated projects for treatment of mentally-ill offenders and IST defendants in county jails, and sought ways to streamline program operations and better align reporting requirements.

One of the current barriers to adequate treatment and competency restoration is the disconnect between a state hospital and county jail systems. Currently, an order for involuntary medication is valid only at a Department of State Hospitals facility. Once the patient transfers to a new jurisdiction, typically the county jail following the restoration of their competency, the medication order becomes invalid and the defendant may not receive any involuntary medication unless the new jurisdiction seeks a new order from the court. Any gap in medication coverage can result in the defendant decompensating to the point of incompetency once again, necessitating a recommitment in the state hospital. Delays in treatment not only put the defendant's mental health at risk, but also result in unnecessary costs to the state for additional treatment in a state hospital.

AB 2186 (Lowenthal), Chapter 733, allows the representative of any facility where a defendant found incompetent to stand trial is committed, and specified others, to petition for an order to involuntarily medicate the defendant, and, upon issuance of that order, authorizes the involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at any facility housing him or her for purposes of recovering mental competency. Specifically, this new law:

- Requires the court, when determining if the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication, to consider opinions in the reports prepared by the psychiatrist or licensed psychologist appointed by the court to examine the defendant for mental competency purposes, if those reports are applicable to this issue.

- Requires the court, if it finds any one of a list of described conditions to be true, to issue an order, as specified and valid for no more than one year, authorizing involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at any facility housing the defendant for the purpose of recovering mental competency.

- Provides that if an administrative law judge upholds the 21-day certification by the defendant's treating psychiatrist that antipsychotic medication has become medically necessary and appropriate, the court may, for a period of not more than 14 days, extend the certification and continue the required hearing pursuant to stipulation between the parties or upon a finding of good cause.

- Allows the district attorney, county counsel, or representative of any facility where an IST defendant is committed to petition the court for an order, reviewable as specified, to administer involuntary medication pursuant to specified criteria.

- Requires the court to review the order to administer involuntary medication at the time of the review of the initial competency report by the medical director of the treatment facility and at the time of the review of the six-month progress reports.

- Allows the district attorney, county counsel, or representative of any facility where an IST defendant is committed, within 60 days before the expiration of the one-year involuntary medication order, to petition the committing court for a renewal of the order, subject to the specified conditions and requirements. Requires the petition to include the basis for involuntary medication, as specified, and requires notice of the petition to be provided to the defendant, the defendant's attorney, and the district attorney. Requires the court to hear and determine if the defendant continues to meet the required criteria for involuntary medication and that the hearing be conducted before the expiration of the current order.

Competency: Procedure for Return to Court

A forensic patient is committed to the custody of a state hospital so that he may participate in programs aimed towards the restoration of the patient's mental competence so that he may stand trial for crimes for which he is charged. Some patients, however, have severe mental disorders that make it unlikely that they can be restored to competency. For these patients, the state hospital issues a progress report to the committing court informing it that the patient is incompetent to stand trial and not likely able to regain competency in the foreseeable future. Many counties, however, do not retrieve these individuals as is required under existing law, which leaves them in the custody of the state hospital at financial cost to the state and further exacerbating the already lengthy waitlist for placement in a state hospital.

AB 2625 (Achadjian), Chapter 742, specifies procedures relative to returning to the court a defendant who is committed to a state hospital for treatment to regain mental competency but who has not recovered competence. Specifically, this new law:

- Requires the medical director of the state hospital or other treatment facility to which a defendant is confined for treatment to regain mental competence to do the following if the medical director's report concerning the defendant's progress toward mental competency recovery indicates that there is no substantial likelihood that the defendant will regain competency in the foreseeable future:
    - Promptly notify and provide a copy of the report to the defendant's attorney and the district attorney; and,
    - Provide a separate notification, in compliance with applicable privacy laws, to the committing county's sheriff that transportation will be needed for the patient.
- Requires that a defendant committed to a state hospital for treatment to regain mental competency, but who has not recovered competence, to be returned to the committing court no later than 90 days before the expiration of the defendant's term of commitment.

Welfare Checks: Firearms

Current law authorizes, upon probable cause, a peace officer or other specified mental health treatment individuals to take, or cause to be taken, a person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment when the person, as a result of a mental health disorder, is a danger to himself, herself, or others, or is gravely disabled. Additionally, existing law requires that whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person that is a danger to himself, herself, or others as a result of a mental illness or disorder, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon be confiscated by any law enforcement agency or peace officer, who is required to retain custody of the weapon.

SB 505 (Jackson), Chapter 918, requires every law enforcement agency to develop, adopt, and implement written policies and standard protocols pertaining to the best manner to conduct a "welfare check" when the inquiry into the welfare or well-being of the person is motivated by a concern that the person may be a danger to himself or herself or to others, and requires that the policies encourage a peace officer, prior to conducting the welfare check and whenever possible and reasonable, to conduct a search of the state's firearms database to determine whether the subject of the welfare check is a registered firearm owner.

Juvenile Justice Recommendations & Mentally-Ill Offender Crime Reduction

Existing law establishes, within the Board of State and Community Corrections, the California Juvenile Justice Data Working Group (CJJDWG), and the working group is required, among other things, to recommend a plan for improving specified juvenile justice reporting requirements, including streamlining and consolidating requirements without sacrificing meaningful data collection. The working group is required to submit its recommendations to the board no later than December 31, 2014.

Additionally, existing law requires the board to administer mentally ill offender crime reduction grants on a competitive basis to counties that expand or establish a continuum of timely and effective responses to reduce crime and criminal justice costs related to mentally-ill juvenile and adult offenders. The grants administered by the board are required to be divided between adult and juvenile mentally-ill offender crime reduction grants in accordance with the funds appropriated for each type of grant.

SB 1054 (Steinberg), Chapter 436, extends a recommendations plan deadline for the CJJDWG to April 30, 2015 and clarifies that the mentally-ill offender crime reduction grants be divided equally among adult and juvenile programs.

Criminal Procedure: Incompetency

California law prohibits a person from being tried or punished for a criminal offense while that person is mentally incompetent. Through the 2011 Realignment Legislation addressing public safety, two new classes of supervision were created: mandatory supervision and postrelease community supervision (PRCS). While existing law relative to incompetency applies to criminal trials and probation revocation hearings, it is silent with respect to revocation hearings for offenders on PRCS or mandatory supervision, as there were no corresponding changes made to the law governing competency when realignment was enacted. As a result, there is no lawful mechanism to assist an individual when a judge or attorney suspects that he or she may not be competent to understand the proceedings or assist his or her attorney in a PRCS or mandatory supervision revocation hearing.

SB 1412 (Nielsen), Chapter 759, applies procedures relative to persons who are incompetent to stand trial (IST) to persons who may be mentally incompetent and face revocation of probation, mandatory supervision, PRCS, or parole. Specifically, this new law:

- Provides that only a court trial is required to determine competency in any proceeding for a violation of probation, mandatory supervision, PRCS, or parole.

- Requires a defendant committed to a mental health facility who has not recovered competency to be returned to the committing court no later than the shorter of the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision or other terms specified in existing law.

- Requires the court to reinstate mandatory supervision in a proceeding alleging a violation of that supervision if the person is not placed under a conservatorship, as described, or if a conservatorship is terminated.

- Allows the court, when reinstating mandatory supervision, to modify the terms and conditions of mandatory supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.

- Requires the court, if the defendant is found mentally incompetent during a PRCS or parole revocation hearing, to dismiss the revocation hearing and return the defendant to supervision. Allows the court, except as specified, if the revocation hearing is dismissed because of the defendant's incompetency, to, using the least restrictive option to meet the defendant's mental health needs, do any of the following:

    - Modify the terms and conditions of supervision to include appropriate mental health treatment;

    - Refer the matter to any local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant; or,

    - Refer the matter to the public guardian of the committing county to initiate conservatorship proceedings, as specified. Provides that the court is to use this option only if there are no other reasonable alternatives to establishing a conservatorship to meet the defendant's mental health needs.

- Prohibits, if a conservatorship is established as specified in the provisions above, the county or the California Department of Corrections and Rehabilitation from compassionately releasing the defendant or parolee or otherwise causing the termination of his or her supervision or parole based on the establishment of the conservatorship.

- Repeals law held unconstitutional relative to misdemeanor-only provisions in IST cases.

- Makes conforming changes to apply procedures relative to persons who are IST to persons who may be mentally incompetent and face revocation of probation, mandatory supervision, PRCS, or parole.

PROBATION/MANDATORY SUPERVISION

Mandatory Supervision

Criminal justice realignment gives the sentencing judge discretion to impose two types of sentences to county jail. (Pen. Code, § 1170, subd. (h)(5).) The court may commit the defendant to county jail for the straight term allowed by law. (Pen. Code, § 1170, subd. (h)(5)(A).) With this alternative, the defendant will serve the computed term in custody, less conduct credits, then be released without restriction. With the second alternative, the court may send the defendant to county jail for the computed term, but suspend a concluding portion of the term. (Pen. Code, § 1170, subd. (h)(5)(B).) During this time the defendant will be supervised by the county probation officer in accordance with the terms, conditions and procedures generally applicable to persons placed on probation. If the court chooses to impose the supervision period, the defendant's participation is mandatory. Like the straight sentence, once the custody and supervision term has been served, the defendant is free of any restrictions or supervision. These sentences are called "split sentences" because they generally are composed of a mixture of custody and mandatory supervision time.

Mandatory supervision is the period of time in a split sentence when a person is under required supervision of a county probation department following a period of incarceration. In 2013, SB 76 (Chapter 32, Statutes of 2013) a budget trailer bill was introduced and signed into law. In part, SB 76 clarified that the mandatory supervision period of a split sentence commences immediately upon release from incarceration. This language was inadvertently chaptered out by SB 463 (Pavley), Chapter 508, Statutes of 2013.

> **AB 579 (Melendez), Chapter 12,** provides that when a court commits a person convicted of a jail felony to both county jail and a period of time under the supervision of the probation department (a "split sentence"), the period of mandatory supervision shall commence upon release from custody.

Mandatory Supervision: Fees

Existing law authorizes a trial court to order a defendant to pay the reasonable cost of supervision when probation is granted or a conditional sentence is imposed. Existing law takes into account a defendant's ability to pay using a mechanism to determine the appropriate amount that a defendant should be charged.

The mandatory supervision population deadline is a similarly situated population to those on probation or who receive a conditional sentence. However, two recent appellate court decisions held that the probation supervision fee may not be applied to the mandatory supervision portion of a split sentence because the plain language of the pertinent statute does not expressly reference mandatory supervision, and mandatory supervision is neither a grant of probation nor a conditional sentence. (See *People v. Fandinola* (2013) 221 Cal.App.4th 1415; and *People v. Ghebretensea* (2013) 222 Cal.App.4th741.)

Probation officers argue these rulings have the potential to disincentivize split sentences, resulting in more straight jail sentences due to the cost of supervision. Moreover, supervision fees can help to cover a portion of the actual costs of providing critical adult field services supervision and programs. Existing law needs updating to account for mandatory supervision offenders who are now under the supervision of local probation departments.

AB 2199 (Muratsuchi), Chapter 468, authorizes probation departments to charge a defendant for all, or a portion of, the reasonable cost of mandatory supervision, subject to the defendant's ability to pay.

Probation and Parole: Sex Offender Management Program

AB 1844 (Fletcher), Chapter 219, Statutes of 2010, commonly referred to as "Chelsea's Law," required that persons placed on parole or probation for a crime requiring annual registration as a sex offender participate in, and successfully complete as a condition of release, an approved sex offender management program. The law is unclear if person convicted prior to the passage of Chelsea's Law are required to participate in an approved sex offender management program.

AB 2411 (Bonta), Chapter 611, clarifies that participation in the sex offender management program is required by every probationer and parolee convicted of a crime requiring registration as a sex offender regardless of when the person's crime or crimes were committed.

Offenders: Home Detention Programs

As part of the 2011 Realignment Act, counties were given many tools to address the increase in offenders, including state funding to house and create programs for offenders as well as increased funding for successful programs. Counties were also given expanded authority to place county offenders into alternative custody programs such as electronic monitoring. However, counties have found that some inmates will refuse to participate in electronic monitoring programs because they cannot earn conduct credits. This means that an inmate could serve less time by remaining in custody where he or she can earn conduct credits; therefore the inmate chooses to stay in county jail even though he or she could be safely placed in the community.

AB 2499 (Bonilla), Chapter 612, provides offenders, who are subject to the custody of a local correctional administrator, with the opportunity to earn credit while participating in electronic monitoring and work release. Specifically, this new law:

- Expands the information a local law enforcement agency may receive about offenders on electronic monitoring to include current and historical GPS coordinates, if available, and restricts the use of this information to investigatory purposes;

- Requires an agency such as a police department that has knowledge that the subject in a criminal investigation is a participant in an electronic monitoring program to make reasonable efforts to notify the supervising agency prior to serving a warrant or taking

any law enforcement action against a participant;

- Clarifies that mandatory supervision commences, unless otherwise ordered by the court, upon release from physical custody or an alternative custody program, whichever is later; and,

- Allows time spent in camp, work furlough, other facilities to count as mandatory jail time, even if the underlying statute does not require a mandatory minimum period of jail time.

Case Transfers: Restitution

Existing law allows a person released on probation or mandatory supervision to make a motion to transfer the case to the county in which the person permanently resides. (Pen. Code, § 1203.9, subd. (a).) But when a case is transferred from one county to another, the transferring county loses jurisdiction, and the receiving county accepts jurisdiction of the case. (Pen. Code, 1203.9, subd. (b).) The Rules of Court promulgated by the Judicial Council require that whenever possible the transferring county establish the amount of victim restitution owed before making such a transfer. (Cal. Rules of Court, rule 4.530(g)(2).)

However, cases are often transferred to another county without a determination of victim restitution. The receiving court is not as well situated to determine an accurate restitution amount since the relevant witnesses and information are in the transferring county. The victim may also suffer hardship if required to travel to the receiving county to seek restitution. Requiring the transferring county to determine restitution before transferring the case, whenever possible, alleviates these concerns.

AB 2645 (Dababneh), Chapter 111, provides that where jurisdiction of a case in which the defendant has been placed on mandatory supervision or probation is transferred, the court in the transferring county shall determine the amount of restitution owed to the victim, unless the determination cannot be made in a reasonable amount of time. Specifically, this new law:

- Requires a court transferring a probation or mandatory supervision case to another county to first determine the amount of victim restitution, unless the court is unable to make that determination within a reasonable time.

- States that if the case is transferred without a determination of restitution, the transferring court must complete the determination as soon as practicable.

- States that, with the exception of the restitution order, the receiving county has full jurisdiction over the case.

Criminal Procedure: Incompetency

California law prohibits a person from being tried or punished for a criminal offense while that person is mentally incompetent. Through the 2011 Realignment Legislation addressing public safety, two new classes of supervision were created: mandatory supervision and postrelease community supervision (PRCS). While existing law relative to incompetency applies to criminal trials and probation revocation hearings, it is silent with respect to revocation hearings for offenders on PRCS or mandatory supervision, as there were no corresponding changes made to the law governing competency when realignment was enacted. As a result, there is no lawful mechanism to assist an individual when a judge or attorney suspects that he or she may not be competent to understand the proceedings or assist his or her attorney in a PRCS or mandatory supervision revocation hearing.

SB 1412 (Nielsen), Chapter 759, applies procedures relative to persons who are incompetent to stand trial (IST) to persons who may be mentally incompetent and face revocation of probation, mandatory supervision, PRCS, or parole. Specifically, this new law:

- Provides that only a court trial is required to determine competency in any proceeding for a violation of probation, mandatory supervision, PRCS, or parole.
- Requires a defendant committed to a mental health facility who has not recovered competency to be returned to the committing court no later than the shorter of the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision or other terms specified in existing law.
- Requires the court to reinstate mandatory supervision in a proceeding alleging a violation of that supervision if the person is not placed under a conservatorship, as described, or if a conservatorship is terminated.
- Allows the court, when reinstating mandatory supervision, to modify the terms and conditions of mandatory supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.
- Requires the court, if the defendant is found mentally incompetent during a PRCS or parole revocation hearing, to dismiss the revocation hearing and return the defendant to supervision. Allows the court, except as specified, if the revocation hearing is dismissed because of the defendant's incompetency, to, using the least restrictive option to meet the defendant's mental health needs, do any of the following:
    - Modify the terms and conditions of supervision to include appropriate mental health treatment;

- Refer the matter to any local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant; or,

- Refer the matter to the public guardian of the committing county to initiate conservatorship proceedings, as specified. Provides that the court is to use this option only if there are no other reasonable alternatives to establishing a conservatorship to meet the defendant's mental health needs.

- Prohibits, if a conservatorship is established as specified in the provisions above, the county or the California Department of Corrections and Rehabilitation from compassionately releasing the defendant or parolee or otherwise causing the termination of his or her supervision or parole based on the establishment of the conservatorship.

- Repeals law held unconstitutional relative to misdemeanor-only provisions in IST cases.

- Makes conforming changes to apply procedures relative to persons who are IST to persons who may be mentally incompetent and face revocation of probation, mandatory supervision, PRCS, or parole.

RESTITUTION

Victim Compensation: Peer Counseling Expenses

The California Victim's Compensation Program (CalVCP) is the largest source of victim's benefits in California. While CalVCP offers benefits to a wide range of victims, there are shortcomings to the current system. Victim compensation funds are intended to be available for vulnerable individuals, especially people who experience violence. One way to address the shortcomings of CalVCP is to ensure that programs providing peer counseling to victims of violent crime are able to request reimbursement for those services. Under the existing model, "intervention specialists" providing counseling to victims of domestic violence and sexual violence are reimbursed. Unfortunately, peer counseling for victims of other violent crimes is not reimbursed.

AB 1629 (Bonta), Chapter 535, authorizes the California Victim Compensation and Government Claims Board to reimburse a crime victim or a derivative victim for outpatient violence-peer-counseling expenses incurred. Specifically, this new law:

- Allows CalVCP to reimburse for outpatient violence peer counseling expenses to direct or derivative crime victims.
- Defines "violence peer counseling services" to mean counseling by a violence peer counselor for the purpose of rendering advice or assistance for victims of violent crime and their families.
- Defines "violence peer counselor" to mean a provider of formal or informal counseling services who is employed by a service organization for victims of violent crime, whether financially compensated or not, and who meets specified requirements.
- Defines "service organization for victims of violent crime" to mean a nongovernmental organization that meets both of the following criteria:
    - Its primary mission is to provide services to victims of violent crime.
    - It provides programs or services to victims of violent crime and their families, and other programs, whether or not a similar program exists in an agency that provides additional services.
- Sunsets these provisions January 1, 2017.

Victims of Crime: Restitution: Military Sexual Assault

The Victim Compensation and Government Claims Board (VCGCB) administers the California Victim Compensation Program (CalVCP) which reimburses eligible victims for many crime-related expenses. Funding for the VCGCB comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds.

To be eligible for compensation, applicants must meet specified eligibility requirements. Generally, the victim must: have been a California resident when the crime occurred, or the crime must have occurred in California; cooperate reasonably with police and court officials to arrest and prosecute the offender; cooperate with CalVCP staff to verify the application; not have been involved in events leading to the crime or have participated in the crime; and file the application within three years of the crime.

Existing law prohibits the applications of victims of domestic violence or human trafficking from being denied solely because the crime was not reported law enforcement. These victims may rely on evidence other than a police report to prove that the crime occurred, including medical records or an affidavit from a case worker.

Victims of military sexual assault may not want to report the crime for fear of retaliation or loss of confidentiality, but under current law, the victim must report to law enforcement officer or a higher ranking officer in order to be considered for compensation from CalVCP.

> **AB 2545 (Lowenthal), Chapter 506,** prohibits the denial of an application for CalVCP compensation related to a sexual assault claim, committed by military personnel against military personnel, solely because the sexual assault was not reported to a superior officer or law enforcement at the time of the crime. This new law also provides factors that VCGCB shall consider for purposes of determining if a military-on-military sexual assault claim qualifies for compensation, as specified.

Case Transfers: Restitution

Existing law allows a person released on probation or mandatory supervision to make a motion to transfer the case to the county in which the person permanently resides. (Pen. Code, § 1203.9, subd. (a).) But when a case is transferred from one county to another, the transferring county loses jurisdiction, and the receiving county accepts jurisdiction of the case. (Pen. Code, 1203.9, subd. (b).) The Rules of Court promulgated by the Judicial Council require that whenever possible the transferring county establish the amount of victim restitution owed before making such a transfer. (Cal. Rules of Court, rule 4.530(g)(2).)

However, cases are often transferred to another county without a determination of victim restitution. The receiving court is not as well situated to determine an accurate restitution amount since the relevant witnesses and information are in the transferring county. The victim may also suffer hardship if required to travel to the receiving county to seek restitution. Requiring the transferring county to determine restitution before transferring the case, whenever

possible, alleviates these concerns.

AB 2645 (Dababneh), Chapter 111, provides that where jurisdiction of a case in which the defendant has been placed on mandatory supervision or probation is transferred, the court in the transferring county shall determine the amount of restitution owed to the victim, unless the determination cannot be made in a reasonable amount of time. Specifically, this new law:

- Requires a court transferring a probation or mandatory supervision case to another county to first determine the amount of victim restitution, unless the court is unable to make that determination within a reasonable time.
- States that if the case is transferred without a determination of restitution, the transferring court must complete the determination as soon as practicable.
- States that, with the exception of the restitution order, the receiving county has full jurisdiction over the case.

Restitution: Collection

A person that is in charge of an estate has to locate heirs and beneficiaries in order to make distributions. Under current law, if the administrator of an estate learns that an heir in incarcerated, then he or she is required to notify the California Victim Compensation and Government Claims Board (Board). The board can then pursue collection activities if the inmate owes restitution. However, existing law does not apply to beneficiaries of insurance policies.

AB 2685 (Cooley), Chapter 508, requires that a personal representative or an estate attorney notify the Board when deceased person leaves money to a beneficiary incarcerated in a state or local correctional facility. Specifically, this new law:

- Clarifies that a representative of the Board may provide the probation department, District Attorney, and court with information relevant to the Board's losses before the imposition of the defendant's sentence, in accordance with specified provisions of law.
- Expands the inmate inheritance notice obligation to the Board so that it covers not only heirs, but also beneficiaries.
- Requires the estate attorney, or if there is no estate attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent to give the Board notice of a decedent's death not later than 90 days after the date of death in either of the following circumstances:
    - The deceased person has an heir or beneficiary who is confined.

- The estate attorney, or if there is no estate attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent, knows that an heir or beneficiary has previously been confined.

- Provides that nothing in the provisions shall be interpreted as requiring the estate attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent to conduct an additional investigation to determine whether a decedent has an heir or beneficiary who has been confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation, or its Division of Juvenile Facilities, or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.

Restitution: Collection Methods

The Legislature intended that a restitution obligation should be paid even if payment was not complete at the conclusion of the criminal sentence. Existing law authorizes the California Victims Compensation and Government Claims Board (CVCGCB) or a local collection program to enforce unsatisfied restitution obligations from defendants on any form of supervised release. However, after the enactment of realignment, it is possible for a defendant to be released from custody without a period of supervised release if the judge imposes a full custody term in accordance with the applicable sentencing law. (Pen. Code, § 1170, subd. (h)(5)(A).) Absent statutory authority, the only alternative for a victim to collect outstanding restitution in this situation is civil enforcement.

SB 419 (Block), Chapter 513, extends existing restitution collection methods to defendants who have restitution orders and fines that remain unsatisfied after serving a county jail term which is not followed by a period of supervised release. Specifically, this new law:

- Authorizes the CVCGCB to collect outstanding restitution fines and victim restitution orders after a defendant is released from serving a term of imprisonment in the county jail under realignment, but which did not include a term of supervised release.

- Allows a local collection program to continue to enforce restitution fines and victim restitution orders after a defendant's release from a custody term in a county jail pursuant to realignment, but which did not include a term of supervised release.

- Authorizes the local agency to pay the victim directly rather than through the CVCGCB.

- Authorizes the collection of an administrative fee not to exceed 10% of the total amount collected.

Restitution: Collection Methods

Under current law, restitution and restitution fines are collected by the California Department of Corrections and Rehabilitation from state prison inmates and by counties from jail inmates and persons on probation. Unfortunately, state realignment legislation did not extend similar authority to counties to collect victim restitution from persons placed on mandatory supervision or post-release community supervision. Absent statutory authority, the only alternative for a victim to receive restitution is civil enforcement.

SB 1197 (Pavley), Chapter 517, extends existing restitution collection methods to defendants who are currently on post release community supervision (PRCS) or mandatory supervision. Specifically, this new law:

- Authorizes counties to collect direct restitution orders and restitution fines from persons released from prison on PRCS and persons released from a jail felony split sentence on mandatory supervision.

- States that if a county elects to collect restitution fines and restitution orders, the county shall coordinate efforts with the Franchise Tax Board, as specified.

- Provides that the determination of whether a county will collect restitution and restitution fines from persons on PRCS and mandatory supervision shall be made by the board of supervisors, which shall designate the agency to do the collections.

- Provides a discretionary process for counties to collect restitution orders and restitution fines that is parallel to the process or system for collection of restitution and restitution fines from prison inmates, parolees, and persons serving jail sentences.

- Provides that payment of direct restitution and a restitution fine shall be a condition of PRCS or mandatory supervision.

SEX OFFENSES

Sex Offenses: Certificates of Rehabilitation

In 1998, John Tirey pled guilty to lewd and lascivious acts with two girls under the age of 14 in violation of Penal Code section 288 subdivision (a). He served six years in state prison and was ordered to register as a sex offender. He was discharged from parole in 2004. In 2013, Tirey filed a petition for a certificate of rehabilitation and sought to be relieved of the sex offender registration requirement. The trial court denied his petition.

In People v. Tirey, the Court of Appeal reversed the trial court's decision because the denial violated equal protection principles. The appellate court explained that since the relief was available for persons who were convicted of sexual intercourse, sodomy, oral copulation or sexual penetration with a child 10 years of age or younger; the same relief must be available for the clearly lesser included conduct for which Tirey was convicted. The court found "no rational explanation" for permitting a person previously convicted under section 288.7 of sexual relations with a minor 10 years or younger to obtain a certificate of rehabilitation and be relieved of the registration requirement while denying this right to one previously convicted under section 288(a) of similar conduct with a minor who is 11, 12 or 13 years of age.

The court rejected the Attorney General's contention that the two classes of offenders are not similarly situation because of the different age ranges of their victims. The court found that although the victims' ages might justify disparate treatment of the offenders under the two statutes, it could not justify harsher treatment of those convicted of the lesser offense. Because §288(a) is indisputably a lesser offense than section288.7, the different victim age ranges could not justify the more severe treatment of section 288(a) offenders.

An oversight occurred during the passage of SB 1128 in 2006, which created Penal Code secction 288.7, but failed to make sufficient conforming changes. SB 1128 unintentionally allowed convicted adults who engaged in sexual intercourse, sodomy, oral copulation, and sexual penetration with a child who is 10 years of age or younger, to apply for a rehabilitation certificate. A rehabilitation certificate would exempt felons from their responsibility to register as sexual offenders. This specific Penal Code section is the only one in its division that allows for such a petition.

> **AB 1438 (Linder), Chapter 208**, specifies that the provisions for obtaining a certificate of rehabilitation is inapplicable to a person who has been convicted of engaging in sexual intercourse, sodomy, oral copulation, or sexual penetration with a child who is 10 years of age or younger and would provide that such a person who has obtained a certificate of rehabilitation is not relieved of his or her duty to register as a sex offender.

Protective Orders: Sex Offenses

Under existing law, the court is authorized to issue protective orders upon good cause belief that harm or intimidation of a victim or witness is likely to occur. In cases of domestic violence, the court is required to consider issuing a protective order on its own motion. The protective order would be in place during the pendency of the criminal case.

AB 1498 (Campos), Chapter 665, expands the circumstances under which the court is required to consider issuing a protective order, on its own motion, from domestic violence cases to all cases where a defendant is charged with rape, statutory rape, spousal rape, or any offense that requires registration as a sex offender.

DNA Evidence

In cases involving sexual assault, DNA is gathered from a victim in a specialized forensic medical examination. The forensic evidence is then collected and packaged in what is commonly referred to as a rape kit. Once booked into evidence by law enforcement, the rape kit can be sent to a crime lab for processing and DNA analysis. At the crime lab, a DNA profile can be created if sufficient DNA from a perpetrator is found, and the perpetrator's DNA profile can be uploaded into the FBI's national DNA database, (Combined DNA Index System) CODIS.

Untested rape kits mean lost opportunities to develop DNA profiles, search for matches, link cold cases, prosecute offenders, bring resolution to rape victims and prevent sexual assault crimes by serial sex offenders. Current state law provides a ten year-statute of limitations for most rape cases, which allows criminal charges to be filed within one year of the date when the suspect is conclusively identified for cases involving DNA evidence but only if the DNA is analyzed within two years of the crime.

AB 1517 (Skinner), Chapter 874, sets timelines for law enforcement agencies and crime labs to perform and process DNA testing of rape kit evidence. Specifically, this new law:

- Encourages a law enforcement agency to rape kit evidence received by the agency on or after January 1, 2016, to the crime lab within 20 days after it is booked into evidence, and ensure that a rapid turnaround DNA program, as defined, is in place to submit forensic evidence collected from the victim of a sexual assault to the crime lab within 5 days after the evidence is obtained from the victim;

- Encourages the crime lab, with respect to rape kit evidence received by the lab on or after January 1, 2016, to process that evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence, or to transmit the rape kit evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence;

- Clarifies that the provisions do not require a lab to test all items of forensic evidence obtained in a sexual assault forensic evidence examination;

- Provides that these provisions do not require a DNA profile to be uploaded into CODIS if the DNA profile does not meet federal guidelines regarding the uploading of DNA profiles into CODIS;

- States that for specified sex offenses, if the law enforcement agency does not analyze DNA evidence within six months of the time limits established under existing law, the law enforcement agency shall inform the victim, either orally or in writing, of that fact; and,

- Deletes the requirement under existing law that the identity of the perpetrator must be in issue, for cases involving a specified sex offense, in order to require a law enforcement agency to inform the victim that the agency has not analyzed the DNA evidence.

Sex Offenders: Disabling Monitoring Devices

Existing law imposes a 180-day period of incarceration for any sex offender who removes, disables, or otherwise renders inoperable the global positioning system tracking device affixed as a condition of parole. However, there is no statute that provides for any recourse should a parolee fail to report to have the monitoring device affixed in the first place, or if the parolee willfully renders the device inoperable without physically removing the device.

AB 2121 (Gray), Chapter 603, requires sex offender parolees to report to their parole officers within one working day following release from prison, or as instructed by a parole officer, to be fitted with a GPS tracking device. Specifically, this new law:

- Requires a parolee who is required to register as a sex offender to report to his/her parole agent to have a GPS device affixed within one working day of release from custody, or as instructed by a parole agent, as a condition of parole.

- States that a parolee who is required to register as a sex offender is prohibited not only from removing or disabling the GPS device, but also from rendering it inoperable or knowingly circumventing its operation.

- Provides that parole revocation and incarceration are not mandatory for a violation of the provisions requiring reporting to a parole officer if the parole authority finds that in the interests of justice those penalties are not appropriate in a particular case.

Juveniles: Sex Offenses

Existing law provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, except as specified. When a minor is adjudged a ward of the juvenile court, the court may order certain types of treatment, and as an additional alternative,

may commit the minor to a juvenile home, ranch, camp, or forestry camp, or the county juvenile hall. For minors who have committed felony offenses, the court may order deferral of judgment (DEJ) if specified conditions are met. Juvenile court hearings are closed to the public, except for juvenile court hearings alleging the commission of specified felonies.

SB 838 (Beall), Chapter 919, reduces confidentiality protections juveniles who have committed or who are alleged to have committed specified sex crimes involving an unconscious or disabled victim, as specified. Specifically, this new law:

- Adds to the list of felonies, to which the public may be admitted for the juvenile court proceedings, certain sex offenses accomplished because the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense;

- Requires a minor to complete a sex offender treatment program when a minor is adjudged or continued as a ward of the court for the commission of specified sex offenses, if the court determines, in consultation with the county probation officer, that suitable programs are available;

- States that the court shall consider certain factors, in addition to any other relevant information presented, in determining what type of sex offender treatment program is appropriate for the minor;

- Requires a minor completing a sex offender treatment program to pay all or a portion of the reasonable costs of the program after a determination is made if the ability of the minor to pay; and,

- Makes ineligible for DEJ juveniles who have committed or who are alleged to have committed specified sex crimes involving an unconscious or disabled victim, as specified.

Sex Crimes: Statute of Limitations

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. Under existing law, the prosecution for a felony sex offense subject to mandatory sex offender registration must be commenced within 10 years after the commission of the offense. (Pen. Code, § 801.1, subd. (b).) However, existing law provides that if specified sex crimes were committed when the victim was under 18 years of age, the statute of limitations for those sex offenses is until the victim's 28th birthday. (Pen. Code, § 801.1, subd. (a).) In addition to these two statutes of limitations, there are two tolling provisions for prosecution of specified sex offenses. (See Pen. Code, § 803.) Finally, under existing law, if a sex crime is prosecuted under the One Strike Law, it is not subject to a statute of limitations but can be commenced at any time.

There is consensus in the research literature that most individuals who experience childhood sexual abuse do not disclose this abuse until adulthood. Thus, while there are several opportunities to commence prosecution for sex crimes even after the victim turns 28, advocates contend that some victims need more time to come forward and expose their abuser.

SB 926 (Beall), Chapter 921, extends the statute of limitations for crimes of childhood sexual abuse from a victim's 28th birthday until the victim's 40th birthday. Specifically, this new law:

- Provides that the prosecution for any of the following offenses that is alleged to have been committed when the victim was under 18 years of age may be commenced at any time before the victim's 40th birthday:
    - Rape;
    - Sodomy;
    - Lewd or lascivious acts;
    - Oral copulation;
    - Continuous sexual abuse of a child; and,
    - Sexual penetration.
- Specifies that the extended tolling provisions shall only apply to crimes that were committed on or after January 1, 2015, or for which the statute of limitations that was in effect before January 1, 2015, has not run out as of that date.

Sexual Assault: Victim Counseling

Under current law, a law enforcement officer assigned to a sexual assault case, or his or her agency, is required to immediately notify the local rape victim counseling center, whenever a victim of an alleged rape or an alleged violation of other specified sex crimes is transported to a hospital for any medical evidentiary or physical examination. Some victims, however, instead of going to law enforcement first, go directly to a hospital or medical care provider for treatment. Existing patient privacy protections prevent a hospital from contacting rape victim counseling centers.

SB 978 (DeSaulnier), Chapter 136, authorizes a hospital, upon approval of the victim, to notify the local rape victim counseling center when a victim of an alleged sex crime is presented to the hospital for a medical or evidentiary physical examination.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: Conditional Release

Current law establishes an extended civil commitment scheme for violent sex offenders who are about to be released from prison but are referred for treatment to a state hospital because they suffer from a mental illness which causes them to be a danger to the safety of others. The Department of State Hospitals (DSH) must conduct a yearly examination of the mental condition of a person committed under this scheme and submit an annual report to the court to continue the commitment. Additionally, the department must seek judicial review for release any time it believes a person committed as a sexually-violent predator (SVP) no longer meets the criteria. Regardless of department reporting requirements, a person committed as a SVP may petition the court for conditional release or unconditional discharge after one year of commitment and annually thereafter.

In granting conditional release, the court in the county of commitment may place the SVP in another county, with the committing county's court and prosecuting attorney retaining jurisdiction of all future matters, even if the person is placed at the other end of the state. This option has led to a commitment county conditionally releasing a SVP to another county without any notice to or input from the receiving county.

AB 1607 (Fox), Chapter 877, requires, prior to the court holding a conditional release hearing for a person committed to a state hospital as a SVP, the court to determine the SVP's county of domicile and permits the county of commitment to allow the county of domicile to represent the state at the conditional release hearing. Specifically, this new law:

- Requires the court to deem the county of commitment as the county of domicile and set a date for the conditional release hearing, with at least 30 court days notice, as specified, if no county, other than the county of commitment, is alleged to be the county of domicile.

- Requires the court to hold a hearing to determine the county of domicile if one or more counties, other than the county of commitment, is alleged to be the county of domicile. Allows the designated attorney for any alleged county of domicile, the attorney for the county of commitment, the attorney for the petitioner, and DSH to file and serve declarations, documentary evidence, and other pleadings, specific to the issue of domicile only, at least 10 court days prior to the hearing. Allows the court, in its discretion, to decide the issue of domicile based upon the pleadings alone or permit such additional argument and testimony as is in the interest of justice.

- Requires the court to order, upon conditional release to a county other than the county of commitment, that jurisdiction of the person and all case records be transferred to the court of the county of placement and that the designated attorney for the county of

placement to represent the state in all future proceedings, unless the designated attorney of the county of placement objects to the transfer of jurisdiction.

- Provides that the court's determination of domicile governs the current and subsequent petitions for conditional release.

- Prohibits a person from being conditionally released outside the county of domicile unless the proposed county of placement was given prior notice and an opportunity to comment on the proposed placement.

- Allows the designated attorney for the determined county of domicile to represent the state at conditional release hearings upon the approval of the designated attorney for the county of commitment.

TECHNOLOGY CRIMES

Computer Crimes: New Technology

Numerous incidents have occurred that have compromised the privacy, safety, and personal information of many individuals stored digitally or online. Moreover, cyber criminals often target government computer systems, resulting in tampering, interferences, or damages. Current law does not reflect the rapid changes in technology, and outdated or incomplete definitions in computer crime statutes could allow computer crime perpetrators to escape prosecution and conviction. Further, jurors could be confused if definitions and terms are not accurate and complete.

> **AB 1649 (Waldron), Chapter 379,** specifies the penalties for any person who disrupts or causes the disruption of, adds, alters, damages, destroys, provides or assists in providing a means of accessing, or introduces any computer contaminant into a "government computer system" or a "public safety infrastructure computer system" and adds and updates the definition of specified computing terms to reflect current technology.

Piracy: Audio Recordings and Audiovisual Work

Existing law states that a person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon. This provision does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers.

Existing law also requires, in addition to any other penalty or fine, the court to order a person who has been convicted of a violation of the above provision to make restitution to an owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation.

> **AB 2122 (Bocanegra), Chapter 857,** expands the offense of failing to disclose the origin of a recording or audiovisual work when utilizing the material for financial gain, and when at least 100 articles of audio recordings or audiovisual work are involved, to include "the commercial equivalent thereof."

Disorderly Conduct: Revenge Porn

Revenge porn refers to the posting of illicit pictures of another person without his or her consent, often as retaliation following a bitter breakup between partners. The distribution of a sexually explicit image an individual has taken of another identifiable person while in a private setting without the subject's consent is prohibited under current law. However, current law is silent as to images a person may have taken of themselves and which were subsequently distributed by others without his or her consent.

SB 1255 (Cannella), Chapter 863, expands the elements of the misdemeanor offense which prohibits the unlawful distribution of a consensually-taken image of an identifiable person's intimate body parts. Specifically, this new law:

- Makes it a misdemeanor to intentionally and without consent distribute an image of another identifiable person's intimate body parts or depicting the person engaged in one of several specified sexual acts, when the person distributing the image knows, or should know, that its distribution will cause serious emotional distress, and where the person depicted suffers that distress.

- Provides that a person intentionally distributes an image when he or she personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute it.

- Defines "intimate body part" as "any portion of the genitals, the anus, and in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or clearly visible through clothing."

- Makes distribution of the image exempt from prosecution if:

    - It is made in the course of reporting unlawful activity;

    - It is made in compliance with a subpoena or other court order for use in a legal proceeding; or,

    - It is made in the course of a lawful public proceeding.

VETERANS

Veterans: Sentencing

Of the 2.6 million Americans returning from service in Iraq and Afghanistan as many as 20% have post-traumatic stress disorder (PTSD). One of the unfortunate consequences of PTSD is an increased propensity for criminal behavior. This is tragically borne out by the fact that among incarcerated veterans, veterans from the most recent conflict are three times more likely to have combat-related PTSD.

There is a demonstrable link between veterans with mental health problems as a result of their service and increased levels of incarceration. In spite of this link, California law currently fails to require the consideration of mental health problems associated with military service as a mitigating factor in certain criminal cases.

AB 2098 (Levine), Chapter 163, requires the court to consider a defendant's status as a veteran suffering from PTSD or other forms of trauma when making specified sentencing determinations. Specifically, this new law:

- Requires the court to consider a defendant's status as a veteran suffering from sexual trauma, traumatic brain injury, PTSD, substance abuse, or other mental health problems as result of his or her military service, as a factor in favor of granting probation.

- Requires the court to consider a defendant's status as a combat veteran suffering from sexual trauma, traumatic brain injury, PTSD, substance abuse, or other mental health problems as a result of his or her military service, as a factor in mitigation when choosing whether to impose the lower, middle, or upper term.

Veterans Service Advocate: Correctional Facilities

Recidivism rates among veterans continue to be an issue that must be addressed. Currently the California Department of Corrections and Rehabilitation (CDCR) provides veteran inmates with information and forms to apply and receive State Department of Veterans Affairs (VA) benefits. However, the process for qualifying for VA benefits is often complicated and burdensome.

One of the major problems is that facilities under CDCR's jurisdiction do not have a designated person responsible for assuring that veterans are able to have access to VA benefits upon release.

AB 2263 (Bradford), Chapter 652, authorizes a veterans service organization to volunteer to serve as a veterans service advocate at each facility that is under the jurisdiction of CDCR to assist veteran inmates with securing specified benefits upon their release. Specifically, this new law:

- Authorizes the advocate to develop a veterans economic recidivism prevention plan for each inmate who is a veteran during the 180 day period prior to an inmate's release date;

- Requires CDCR to assist with the development and execution of the veterans economic recidivism prevention plan by facilitating access by the advocate to each inmate who is a veteran;

- Provides that access to inmates will be subject to CDCR screening and clearance guidelines and training requirements that are imposed on other visitors and volunteers;

- Allows advocates access to inmates to the extent it does not pose a threat to the security or safety of the facility, or to inmates and staff;

- Requires a copy of the veterans economic recidivism prevention plan be provided to the inmate prior to the inmate's release;

- Requires the advocate to coordinate with the U.S. Department of Veterans Affairs in order to provide each inmate who is a veteran with access to earned veterans' benefits; and,

- Requires the advocate to coordinate with VA and the county veterans service officer in the county in which the facility is located for advice, assistance, and training, and to evaluate the effectiveness of the veterans economic recidivism prevention plan.

Inmate Assessment: Military Service

Existing law requires the Department of Corrections and Rehabilitation (CDCR) to conduct assessments of all inmates that include, but are not limited to, data regarding the inmate's history of substance abuse, medical and mental health, education, family background, criminal activity, and social functioning. These assessments are to be used to place the inmate in programs that will aid in his or her reentry to society and that will most likely reduce the inmate's chances of reoffending.

Data on the number of incarcerated veterans is difficult to obtain. One of the reasons is because, until recently, this information was self-reported. As of February 2014, the department can now verify prior military service through a data exchange with the U.S. Department of Veterans Affairs.

AB 2357 (Skinner), Chapter 184, requires the Department of Corrections and Rehabilitation to include data regarding an inmate's service in the United States military in its mandatory assessment of all inmates for purposes of placing the inmate in programs that will aid in his or her reentry to society and that will most likely reduce the inmate's chances of reoffending.

Arraignments: Veterans

Penal Code section 1170.9 allows a combat veteran who is eligible for probation for a crime he or she has committed to be ordered to the appropriate treatment program when the court finds that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse or mental health problems stemming from service in the United States Military. Penal Code Section 1170.9 is designed to give our most traumatized soldiers a chance to confront and overcome the wounds of war. It directs courts to consider treatment rather than incarceration when sentencing a defendant who serves or who has served in the military.

However, there is a lack of awareness about this law and not enough being done to identify those who may be eligible. According to a 2014 report of the San Diego Veterans Treatment Review Court Pilot Program, most veterans that become involved in the criminal justice system are not being identified as veterans, and most veterans suffer more than one post-deployment conviction before they have a case in which they are identified as a military veteran.

SB 1110 (Jackson), Chapter 655, requires the court to inform defendants at arraignment about the availability of restorative relief provisions for defendants that are current or former members of the military. Specifically, this new law:

- Requires the Judicial Council to revise its military service form to include information explaining restorative relief provisions of the Penal Code applying to defendants having active duty or veteran military status, as well as the contact information for the county veterans' service office.

- Specifies that "active duty or veteran status" includes active military duty service, reserve duty service, national guard service, and veteran status.

- Requires the court to advise the defendant that certain current or former members of the military are eligible for specific forms of restorative relief under the Penal Code and that he or she may request a copy of the Judicial Council form for notification of military status which explains those rights.

- Requires the court to advise the defendant that he or she should consult with counsel before submitting the form and that he or she may decline to provide the information without penalty.

- States that if the defendant files the form for notification of military status, then the form shall be served on defense counsel and the prosecuting attorney to determine eligibility for veterans' restorative relief.

Diversion: Veterans and Members of the Military

California has nearly two million military veterans living in the state. Many of these veterans suffer from service-related trauma, such as post-traumatic stress disorder, or traumatic brain injury. Unfortunately, some veterans find themselves entangled in the criminal justice system.

Diversion programs and the benefits of these programs are well established. These programs reduce recidivism by targeting the underlying source of criminal behavior. Diversion programs also reduce court and incarceration costs, as well as connect participants to services that help them resume positive community participation.

Successfully completing a diversion program ensures that the participant is able to avoid the consequences of a conviction, such as difficulty finding a job or securing housing. Participation in these programs can connect veterans to services that are available but underutilized, including mental health treatment, addiction treatment, housing and medication.

SB 1227 (Hancock), Chapter 658, creates a diversion program for members of the U.S. Military and veterans who commit misdemeanors and who are suffering from service-related trauma or substance abuse. Specifically, this new law:

- Provides that if the court determines the defendant is eligible, and the defendant consents and waives his or her right to a speedy trial, the court may place the defendant in a pretrial diversion program;

- States that the diversion period may be no longer than two years with progress reports to the court and the prosecutor not less than every six months; and,

- Provides, upon completion of diversion, the arrest upon which the diversion was based shall be deemed to have never occurred and the defendant may indicate that he or she was not arrested or diverted for an offense when asked for a criminal record. However, the diversion may be disclosed in response to a peace officer application request.

VICTIMS

Protective Orders: Sex Offenses

Under existing law, the court is authorized to issue protective orders upon good cause belief that harm or intimidation of a victim or witness is likely to occur. In cases of domestic violence, the court is required to consider issuing a protective order on its own motion. The protective order would be in place during the pendency of the criminal case.

AB 1498 (Campos), Chapter 665, expands the circumstances under which the court is required to consider issuing a protective order, on its own motion, from domestic violence cases to all cases where a defendant is charged with rape, statutory rape, spousal rape, or any offense that requires registration as a sex offender.

Family Justice Centers

There are currently no standards in California law to govern the relationship between service providers and law enforcement elements working under the same roof in a Family Justice Center (FJC). Each service provider at a FJC is bound by the standards of their respective profession; however, there is currently no over-arching structure in law defining the boundaries between these partnerships.

AB 1623 (Atkins), Chapter 85, authorizes a local government or nonprofit organization to establish a FJC to assist crime victims. Specifically, this new law:

- Authorizes a city, county, city and county, or community-based nonprofit organization to establish a FJC to assist victims of domestic violence, sexual assault, elder and dependent adult abuse, and human trafficking to ensure victims of abuse are able to access all needed services in one location.

- Provides that staff members at a FJC may be comprised of, but are not limited to, the following: law enforcement personnel; medical personnel; victim-witness program personnel; domestic violence shelter staff; community-based rape crisis, domestic violence, and human trafficking advocates; social service agency staff members; child welfare agency social workers; county health department staff; city or county welfare and public assistance workers; nonprofit agency counseling professionals; civil legal service providers; supervised volunteers from partner agencies; and, other professionals providing services.

- Prevents a FJC from denying crime victims services on the grounds of criminal history. Prohibits criminal history searches from being conducted on a victim at a FJC as a condition of receiving services within a FJC without the victim's written consent, unless the criminal history search is pursuant to an active criminal investigation.

- Provides that crime victims are not required to participate in the criminal justice system or cooperate with law enforcement in order to receive counseling, medical care, or other services at a FJC.

- Requires each FJC to develop policies and procedures, in collaboration with local community-based crime victim service providers and local survivors of violence and abuse, to ensure coordinated services are provided to victims and to enhance the safety of victims and professionals at the center who participate in affiliated survivor-centered support or advocacy groups.

Victim Compensation: Peer Counseling Expenses

The California Victim's Compensation Program (CalVCP) is the largest source of victim's benefits in California. While CalVCP offers benefits to a wide range of victims, there are shortcomings to the current system. Victim compensation funds are intended to be available for vulnerable individuals, especially people who experience violence. One way to address the shortcomings of CalVCP is to ensure that programs providing peer counseling to victims of violent crime are able to request reimbursement for those services. Under the existing model, "intervention specialists" providing counseling to victims of domestic violence and sexual violence are reimbursed. Unfortunately, peer counseling for victims of other violent crimes is not reimbursed.

AB 1629 (Bonta), Chapter 535, authorizes the California Victim Compensation and Government Claims Board to reimburse a crime victim or a derivative victim for outpatient violence-peer-counseling expenses incurred. Specifically, this new law:

- Allows CalVCP to reimburse for outpatient violence peer counseling expenses to direct or derivative crime victims.

- Defines "violence peer counseling services" to mean counseling by a violence peer counselor for the purpose of rendering advice or assistance for victims of violent crime and their families.

- Defines "violence peer counselor" to mean a provider of formal or informal counseling services who is employed by a service organization for victims of violent crime, whether financially compensated or not, and who meets specified requirements.

- Defines "service organization for victims of violent crime" to mean a nongovernmental organization that meets both of the following criteria:

    - Its primary mission is to provide services to victims of violent crime.

    - It provides programs or services to victims of violent crime and their families, and other programs, whether or not a similar program exists in an agency that provides additional services.

- Sunsets these provisions January 1, 2017.

Restraining Orders: Children

Existing law authorizes a court with jurisdiction over a criminal matter to issue specified protective orders upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, including an order protecting a victim of violent crime from all contact by the defendant.

In cases of domestic violence, if a child was present during the crime, but not listed as a victim of actual physical abuse, the court will not issue a protective order for the child unless there is a showing of good cause that the defendant will attempt to dissuade the child from testifying. Minors who are present during domestic violence are almost always the children of the abused, abuser, or both, and almost invariably the emotional and psychological victims of the abuse. Some of these are infants and young children who cannot attest to the abuse.

> **AB 1850 (Waldron), Chapter 673,** provides that a minor who was not a victim but was physically present at the time of an act of domestic violence, is deemed to have suffered harm for the purpose of issuing a protective order in a pending criminal case, as specified.

Victim Compensation: Guide, Signal, or Service Dogs

Guide, service, and signal dogs are highly trained animals that make a healthy, fulfilling, and independent life possible for people with a variety of physical and mental health challenges. Current law states that it is a criminal offence to cause injury to a guide, signal, or service dog. A defendant who is convicted in these attacks is required to provide restitution to the victim for the harm caused to the dog. If the defendant, however, is unable to provide immediate compensation, the victim is left unable to obtain funds to replace the dog or care for the injuries sustained to the animal.

> **AB 2264 (Levine), Chapter 502,** extends eligibility for compensation of up to $10,000 under the Victim Compensation Program to cover costs associated with the injury or death of a guide, signal, or service dog, including veterinary and other expenses, as a result of a crime if the perpetrator is unable to make restitution to the victim.

Victims of Crime: Restitution: Military Sexual Assault

The Victim Compensation and Government Claims Board (VCGCB) administers the California Victim Compensation Program (CalVCP) which reimburses eligible victims for many crime-related expenses. Funding for the VCGCB comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds.

To be eligible for compensation, applicants must meet specified eligibility requirements. Generally, the victim must: have been a California resident when the crime occurred, or the

crime must have occurred in California; cooperate reasonably with police and court officials to arrest and prosecute the offender; cooperate with CalVCP staff to verify the application; not have been involved in events leading to the crime or have participated in the crime; and file the application within three years of the crime.

Existing law prohibits the applications of victims of domestic violence or human trafficking from being denied solely because the crime was not reported law enforcement. These victims may rely on evidence other than a police report to prove that the crime occurred, including medical records or an affidavit from a case worker.

Victims of military sexual assault may not want to report the crime for fear of retaliation or loss of confidentiality, but under current law, the victim must report to law enforcement officer or a higher ranking officer in order to be considered for compensation from CalVCP.

> **AB 2545 (Lowenthal), Chapter 506,** prohibits the denial of an application for CalVCP compensation related to a sexual assault claim, committed by military personnel against military personnel, solely because the sexual assault was not reported to a superior officer or law enforcement at the time of the crime. This new law also provides factors that VCGCB shall consider for purposes of determining if a military-on-military sexual assault claim qualifies for compensation, as specified.

Domestic Violence: Restraining Orders

In domestic violence cases, courts may issue orders to protect spouses during criminal proceedings, and for up to 10 years after abusers are convicted. However, this protection does not extend to all children because the definition of domestic violence in the Penal Code requires the parties to be married, or formerly married, or have had a dating relationship. The definition found in the Family Code is much broader and includes children and other persons related to one of the parties.

Due to this difference, in criminal cases, judges will not issue a protective order for child victims. Often times the only recourse available is for family members to request a new order to protect children in family court, which is time-consuming and difficult, putting children at risk unless and until a new order to protect children is issued.

> **SB 910 (Pavley), Chapter 638,** expands the definition of domestic violence for purposes of a court's ability to issue restraining orders in domestic violence cases to include abuse perpetrated against a child of a party to the domestic violence proceedings or a child who is the subject of an action under the Uniform Parentage Act, as specified, or against any other person related to the defendant by consanguinity or affinity within the second degree.

Victim Counseling: Sexual Assaults

Under current law, a law enforcement officer assigned to a sexual assault case, or his or her agency, is required to immediately notify the local rape victim counseling center, whenever a victim of an alleged rape or an alleged violation of other specified sex crimes is transported to a hospital for any medical evidentiary or physical examination. Some victims, however, instead of going to law enforcement first, go directly to a hospital or medical care provider for treatment. Existing patient privacy protections prevent a hospital from contacting rape victim counseling centers.

SB 978 (DeSaulnier), Chapter 136, authorizes a hospital, upon approval of the victim, to notify the local rape victim counseling center when a victim of an alleged sex crime is presented to the hospital for a medical or evidentiary physical examination.

MISCELLANEOUS

Student Safety

Federal statutes addressing sexual assault on or around institutions of higher education include Title IX and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).

The Clery Act requires public and private postsecondary educational institutions that receive federal financial aid to disclose information about crimes on and around campuses as well as establish certain rights for victims of sexual assault. Those rights include notification to victims of the right to file criminal charges, available counseling services, the results of disciplinary proceedings, and the option for victims to change their academic schedule or living arrangements.

The Campus Sexual Violence Elimination Act amended the Clery Act to, among other things, require postsecondary institutions to offer prevention and awareness programs to new students and employees regarding rape, domestic and dating violence, sexual assault, and stalking. Programs must include a definition of those offenses and consent with reference to sexual offenses. Institutions are also required to compile statistics of incidents of sexual assault, domestic violence, dating violence and stalking. The Clery Act also requires the Annual Security Report to contain additional information such as prevention programs, procedures once incidents are reported, and possible sanctions following an institutional disciplinary procedure.

While existing federal law requires colleges and universities to disclose information about crimes that happen on or hear campuses, gaps in disclosure exist on several higher education campuses in California. Recent news articles revealed that several California colleges have underreported incidents of sexual assault on their campuses in order to keep crime statistics low. This has resulted in lawsuits and investigations by the federal government.

AB 1433 (Gatto), Chapter 798, requires postsecondary educational institutions to establish policies regarding the reporting of certain crimes to law enforcement agencies, as specified. Specifically, this new law:

- Provides, as a condition for participating in the Cal Grant Program, that any report made by a victim or an employee of certain crimes, including sexual assault, that is received by a campus security authority and made by the victim shall be disclosed to the local law enforcement agency with which the institution has a written agreement;

- Provides that the report shall be forwarded to the appropriate law enforcement agency without identifying the victim, unless the victim consents to being identified after the victim has been informed of his/her right to have his/her personally identifying information withheld; and,

- States that the appropriate law enforcement agency shall be a campus law enforcement agency if one has been established on the campus where the report was made. If no campus law enforcement agency has been established, the report shall be immediately, or as soon as practicably possible, forwarded to a local law enforcement agency.

Summary Criminal History Information: Animal Control Officers

Existing law requires the Department of Justice to furnish state summary criminal history information requested by specified entities, as needed in the course of their duties. Additionally, the department is allowed to furnish federal-level summary criminal history information to specified entities when specifically authorized. Local law enforcement agencies also maintain local summary criminal history information that they furnish as specified by existing law. People allowed access to summary criminal history information include California peace officers, peace officers of other states, prosecuting attorneys, probation and parole officers, county child welfare agency personnel, supervising correctional facility officers, and humane officers. Animal control officers currently do have direct access to summary criminal history information.

AB 1511 (Gaines), Chapter 449, allows criminal justice agencies to furnish state and local summary criminal history information to an animal control officer upon the showing of a compelling need

Emergency Response Services: Active Shooter Incidents

According to the Federal Bureau of Investigation, an active shooter is "an individual actively engaged in killing or attempting to kill people in a confined and populated area." Over the course of a decade and a half, the number of those shot and killed in active shooter incidents has increased 150% across the country. Because these types of incidents are becoming increasingly more frequent, it is vital that local law enforcement agencies, emergency medical care personnel, local government agencies and various venue locations work together in a coordinated, cohesive manner.

AB 1598 (Rodriguez), Chapter 668, requires fire, law enforcement, and emergency medical services agencies to jointly establish standard operating procedures and coordinated training programs for active shooter incidents.

Trespass: Request for Law Enforcement Assistance

Current law allows property owners to fill out a "Trespass Arrest Authorization" form and file it with the local police department. The signed form gives police officers authority to go onto private property, and if they find trespassers, they can make arrests without the owner having to be present. The verification is done through the "Trespass Arrest Authorization" form so the police department does not risk litigation.

Extending arrest authorization forms from 6 to 12 months not only strengthens the authorization

of the form, but it significantly reduces the administrative time for the police departments processing them. Additionally, extending the arrest authorization allows owners to file the form only once a year, while keeping properties free from unwanted individuals for a period of 12 months.

> **AB 1686 (Medina), Chapter 453**, extends from 6 months to 12 months the time in which a property owner may authorize a peace officer to arrest a trespasser on private property, closed to the public and posted as being closed, without the owner of the property being present.

DNA: Testing, Research, or Experimentation

The Department of Justice maintains a repository of more than 1.8 million DNA samples from individuals detained for allegedly committing a criminal offense. Recent court rulings have determined that it is constitutional for law enforcement to maintain DNA samples of arrestees indefinitely, even if a person was never convicted of a crime. These genetic samples contain an individual's entire genome and could be tested to reveal traits related to ethnicity, health, and behavior. While the department may perform DNA analyses only "for identification purposes," this term is not defined and could include research into the link between genes and criminal behavior. Existing law authorizes the department to use its samples for research purposes, and its vast collection of DNA samples provides the means to study how genetic profiles could help preemptively identify individuals predisposed to criminal behavior. The ability of this research to identify likely and potential criminals will increase dramatically as researchers gain the means to track the interaction of thousands of gene variants across millions of samples and correlate these results with known criminal behaviors. The Department of Justice DNA repository offers that capability.

> **AB 1697 (Donnelly), Chapter 454,** prohibits the DNA and forensic database and data bank and the Department of Justice DNA Laboratory from being used as a source of genetic material for testing, research, or experiments by any person, agency, or entity seeking to find a causal link between genetics and behavior or health.

Falsified Public Records: Voiding Procedures

With the proliferation of real estate fraud crimes over the past 10 years, the need for prosecutors to help victims of real estate fraud clear title to their property is greater than ever. There are many cases throughout California where prosecutors successfully convict defendants of filing false or fraudulent deeds, liens, conveyances, etc. to real property, but a criminal court declines to adjudge the false or fraudulent deed void for lack of clear law on the subject.

The only remedy for victims in these cases is through a civil quiet title action. This is often time consuming, economically and mentally taxing for the victim, and sometimes unsuccessful. The victim must fight on his or her own to clear title to property that was clouded by a defendant who has suffered a criminal conviction, thereby adding another level of injury.

AB 1698 (Wagner), Chapter 455, creates a process to allow a judge to declare an instrument void when there is a criminal action finding that instrument forged or false. Specifically, this new law:

- Provides that after a person is convicted of filing a forged instrument, upon written motion of the prosecuting agency, the court after a hearing shall issue a written order that the false or forged instrument be adjudged void ab initio if the court determines that an order is appropriate.

- Provides that the order shall state whether the instrument is false, forged or both and a copy of the instrument shall be attached to the order at the time it is issued by the court and a certified copy of the order shall be filed at the appropriate public office by the prosecuting agency.

- Provides if the false or forged instrument has been recorded with a county recorder the order shall be recorded in the county where the real property is located.

- Sets forth procedures that the prosecuting agency shall use in filing a motion.

- Provides that the order shall be considered a judgment and subject to appeal under the Code of Civil Procedure.

Peace Officers: Firearm Training

Under existing law, peace officers are required to complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training (POST) prior to exercising the powers of a peace officer. This training requirement includes the Arrest and Firearms Course. All sworn probation employees must complete this training. Only providers certified through POST can offer these courses.

It has been difficult for some county probation departments to complete the required training as a result of limited dates and locations of course offerings. Often, courses are held in locations that require extensive travel and time off to complete. Further, course can be impacted based on the number of slots available to law enforcement agencies and the general public. Regionally, many probation departments are challenged in getting their deputies into available courses in a timely manner.

AB 1860 (V. Manuel Pérez), Chapter 87, provides that a probation department that is a certified provider of a specified peace officer introductory training course on arrests and firearms prescribed by POST is not required to offer the course to the general public.

Incarcerated Persons: Voting Rights Guide

Existing law requires each county probation department to establish and maintain on the department's Internet Website a hyperlink to the Internet Website at which the Secretary of State's voting rights guide for incarcerated persons may be found, or to post, in each county probation department where probationers are seen, a notice that contains the Website address at which the Secretary of State's voting rights guide for incarcerated persons may be found.

AB 2243 (Weber), Chapter 899, requires the California Department of Corrections and Rehabilitation to either establish and maintain on the department's Website a hyperlink to the Website at which the Secretary of State's voting rights guide for incarcerated persons may be found, or post in each parole office where parolees are seen a notice that contains the Website address at which the Secretary of State's voting rights guide for incarcerated persons may be found.

Violent Crime Information Center

Existing law requires the Attorney General to maintain the Violent Crime Information Center (VCIC) to assist in the identification and the apprehension of persons responsible for specific violent crimes and for the disappearance and exploitation of persons, particularly children and dependent adults. The VCIC is also required to assist local law enforcement agencies and county district attorneys by providing investigative information on persons responsible for specific violent crimes and missing person cases.

SB 846 (Galgiani), Chapter 432, clarifies that, notwithstanding any other law, a law enforcement agency, in California, may request information or data maintained by the Department of Justice for the purpose of linking unsolved missing or unidentified persons cases, or for the purpose of resolving these cases, as specified.

Missing or Unidentified Persons

Inconsistencies and outdated language across various sections cause confusion for both law enforcement agencies and the Department of Justice (DOJ). Due to the way the sections have evolved over time, the requirements are not outlined in a clear consistent manner for agencies to implement. In addition, contradictory language across statutes results in delays in the reporting of information in both missing and unidentified person cases.

SB 1066 (Galgiani), Chapter 437, revises, recasts, and renumbers several provisions of law relating to missing or unidentified persons. Specifically, this new law:

- Expands the requirements for the conduct of a postmortem examination of an unidentified deceased person to a medical examiner, or other agency responsible for a postmortem examination or autopsy.

- Requires a coroner, medical examiner, or other agency investigating the death of an unidentified person to report the death to the DOJ no later than 10 calendar days from

the date of discovery, using the department's Unidentified Deceased Person Reporting Form.

- Expands provisions of law that requires specified information related to the investigation into the identity of an unidentified person be submitted, by a coroner, to DOJ within 45 days and 180 days, respectively, to apply to a police department, sheriff's office, medical examiner, or other law enforcement agency investigating the death of an unidentified person.

- Requires that the final report of the investigation into the identity of the body or human remains of an unidentified person include any anthropology report, fingerprints, photographs, and autopsy report.

- Increases the age that a "Be On the Look-Out Bulletin" be issued for a missing person or if there is evidence that the person is at risk from 16 to 21 years of age, and requires that these bulletins be issued by police or sheriff's department within its jurisdiction, in addition to DOJ.

- Requires DOJ publicly accessible computer internet directory of information to include information related to at-risk missing persons and unidentified persons.

- Increases from 16 to 21 years of age, the age at which a missing person or runaway report taken by a department, other than that of a city or county of residence of the missing person or runaway, the department, or division of the California Highway Patrol taking the report is required without delay, and within no more than 24 hours, to notify and forward a copy of the report to the police or sheriff's department having jurisdiction over the missing person or runaway's residence, and of the place where the person was last seen.

- Requires a law enforcement agency receiving a report, in cases where the person reported missing is under 21 years of age, or if there is evidence the person is at risk, to electronically report to DOJ via the California Law Enforcement Telecommunications System within two hours of receiving the report, as specified. Information not available for electronic transmission must be obtained by the investigating agency and provided as a supplement to the original entry as soon as possible, but not later than 60 days after the electronic entry. Supplemental information may include: dental records; fingerprints; photographs; description of physical characteristics; description of clothing; vehicle information; and, other information describing any person or vehicle believed to be involved in taking, abducting or retaining the missing person.

- Makes the Attorney General's (AG's) Office database the statewide database for dental or skeletal x-rays, and requires that the AG's Office forward the information to the National Crime Information Center.

- Deletes references to "dependent" adults and replaces that term with the term "at-risk" adults.

- Recasts and renumbers numerous code sections, makes conforming cross references and technical amendments.

Emergency Services: Silver Alert

Existing law authorizes a law enforcement agency to request that the California Highway Patrol (CHP) activate a "Silver Alert" if a person is reported missing, and the agency determines that certain requirements are met, including, that the missing person is 65 years of age or older, the investigating law enforcement agency has utilized all available local resources, and the law enforcement agency determines that the person has gone missing under unexplained or suspicious circumstances.

> **SB 1127 (Torres), Chapter 440,** authorizes a law enforcement agency to request the CHP to activate a "Silver Alert" when a developmentally disabled or cognitively impaired person is reported missing, and specified conditions are met, and deletes the existing January 1, 2016 sunset date on the "Silver Alert" law.

Trespass: Request for Law Enforcement Assistance

Business owners may now file a Letter of Agency (Trespass Arrest Authorization) to permit local police departments to enter their property to assist with trespass violations. Penal Code Section 602, subdivision (o) limits the authorization period to six months. Business owners find the limited six-month requirement burdensome and find that the six-month re-issuance can lead to gaps in service if a timely reauthorization is not always possible.

> **SB 1295 (Block), Chapter 373,** extends from a maximum of 6 months to a maximum of 12 months the time in which a property owner may authorize a peace officer to arrest a trespasser on private property, closed to the public and posted as being closed, without the owner of the property being present, and provides that a request for assistance shall expire upon transfer of ownership of the property or upon change of the person in lawful possession.

Misdemeanors: Maximum Sentence

In 1996 Congress enacted the Illegal Immigration Reform and Immigration Responsibility Act, which expanded the list of crimes for which a legal immigrant can be deported to include an "aggravated felony." Under immigration law, an aggravated felony is a term of art that can apply to crimes that are neither aggravated nor felonies.

Under the U.S. Immigration and Nationality Act, aggravated felonies fall into two categories: specific crimes that federal law has determined trigger deportation, and crimes that are deportable if the defendant receives a 365-day sentence, regardless of the time served. The time imposed by the court, irrespective of whether the time is suspended or not, is considered part of

the sentence.

California defines a misdemeanor as a crime punishable for one year, 365 days or less. Therefore, a person convicted of a misdemeanor in California who is sentenced to one year with part of, or even most of, the sentence suspended is still convicted of an aggravated felony for purposes of federal immigration law. Obtaining a sentence of 364 days or less for misdemeanor convictions will prevent some offenses from being classed as aggravated felonies for purposes of immigration law.

SB 1310 (Lara), Chapter 174, reduces the maximum sentence for a misdemeanor from 365 days to 364 days.

Public Safety Omnibus Bill

Existing law often contains technical and non-substantive errors due to newly enacted legislation. These provisions must be updated in order to correct these deficiencies.

SB 1461 (Senate Committee on Public Safety), Chapter 54, makes technical and corrective changes, as well as non-controversial substantive changes, to various code sections relating to criminal justice. Specifically, this new law:

- Provides, as it pertains to Welfare and Institutions Code Section 1403, that the Compact Administrator is the Secretary of the California Department of Corrections and Rehabilitation, or his or her designee;

- Replaces, as it pertains to Government Code Section 15155, the specified representative with a representative from the California Office of Emergency Services;

- Clarifies, as it pertains to Harbors and Navigation Code Section 655.7, that the prohibition does not apply to marine patrol, harbor police or emergency personnel in performance of their duties;

- Clarifies that when another punishment is not stated, the "catch-all" fine for an infraction is $250; and,

- Makes a number of cross-reference and technical changes in the Corporation Code, Health and Safety Code, Fish and Game Code, Penal Code and Welfare and Institutions Code.

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